

HOUSE JOURNAL

SEVENTY-EIGHTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

FORTIETH DAY — THURSDAY, MARCH 27, 2003

The house met at 9 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 107).

Present — Mr. Speaker; Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Absent, Excused — Smithee.

The invocation was offered by Reverend Tony Thornton, pastor, First Baptist Church, Kountze, as follows:

Gracious Heavenly Father, we bow our heads and our hearts as we come before your holy presence. We thank you that today is ours to enjoy, and that as we begin this day, we recognize that your mercies are renewed afresh each morning. Lord God, we acknowledge your power and majesty to rule and reign concerning the affairs of us mortal men. We ask that you be our helper in life and our strength each day so as to enable us to walk according to the truths you have taught us.

Dear Lord, as we gather here in this chamber to do the business of this great state, remind us that we come here as servants of the people, and our role is that of giving and not of taking.

Father, as we as a nation are experiencing a time of military conflict, we pray for your wisdom and leadership to be given to our dear president and those leading our great nation. We ask for your protection upon our troops as they unselfishly serve to protect our cherished freedoms. We pray for a quick end to this present conflict and that righteousness prevail for the good of all.

I ask in closing, dear Lord, that our representatives here today have a special awareness of our appreciation for their commitments to give of themselves as they labor to build, strengthen, and encourage the work done in our state.

Father, we pray for your grace and mercy to flow through us in all that we do, and we thank you for your continued presence and power in our lives. Amen.

CAPITOL PHYSICIAN

The speaker recognized Representative Wong who presented Dr. Stephen Spann of Houston as the "Doctor for the Day."

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

LEAVE OF ABSENCE GRANTED

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

Smithee on motion of Hunter.

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. 19).

(Morrison in the chair)

HR 595 - ADOPTED (by Woolley and Nixon)

Representative Woolley moved to suspend all necessary rules to take up and consider at this time **HR 595**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 595, Honoring the 2003 Capitol Scholars.

HR 595 was adopted without objection.

INTRODUCTION OF GUESTS

The chair recognized Representatives Woolley and Nixon who introduced the 2003 Capitol Scholars.

HCR 152 - ADOPTED
(by J. Davis)

Representative J. Davis moved to suspend all necessary rules to take up and consider at this time **HCR 152**.

The motion prevailed without objection.

The following resolution was laid before the house:

HCR 152, Welcoming faculty and students from the Galloway School in Houston to the State Capitol.

HCR 152 was adopted without objection.

LEAVE OF ABSENCE GRANTED

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

Isett on motion of Flynn.

HR 556 - ADOPTED
(by Y. Davis)

Representative Y. Davis moved to suspend all necessary rules to take up and consider at this time **HR 556**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 556, Congratulating Murdine Berry of Dallas on the selection of James Morney's Farm for inclusion in the Family Land Heritage Program of the Texas Department of Agriculture.

HR 556 was adopted without objection.

HR 586 - ADOPTED
(by Coleman)

Representative Coleman moved to suspend all necessary rules to take up and consider at this time **HR 586**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 586, Honoring the University of Houston College of Optometry on the occasion of its 50th anniversary.

HR 586 was adopted without objection.

HR 597 - ADOPTED
(by Dutton)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 597**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 597, Honoring the Reverend Dr. Prince Earl W. Bryant, Sr., of Houston for 40 years of service to the gospel ministry.

HR 597 was adopted without objection.

HR 602 - ADOPTED
(by Naishtat)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 602**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 602, Honoring Dr. Joe W. Neal of Austin for his contributions to international education.

HR 602 was adopted without objection.

HCR 155 - ADOPTED
(by Mabry)

Representative Mabry moved to suspend all necessary rules to take up and consider at this time **HCR 155**.

The motion prevailed without objection.

The following resolution was laid before the house:

HCR 155, Recognizing April 6-12, 2003, as Building Safety Week in Texas.

HCR 155 was adopted without objection.

HR 607 - ADOPTED
(by Giddings)

Representative Giddings moved to suspend all necessary rules to take up and consider at this time **HR 607**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 607, Honoring the members of the Educational Village who are 80 years of age and older for their contributions to the Oral History Program of the African American Educational Experience in Dallas Archives and History Program.

HR 607 was adopted without objection.

HR 349 - ADOPTED
(by Allen, Keel, Stick, and Baxter)

Representative Stick moved to suspend all necessary rules to take up and consider at this time **HR 349**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 349, In memory of John William Overbey of Austin.

HR 349 was unanimously adopted by a rising vote.

On motion of Representatives Dukes and Hill, the names of all the members of the house were added to **HR 349** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Stick who introduced the family of John William Overbey.

HR 399 - ADOPTED (by Mercer)

Representative Mercer moved to suspend all necessary rules to take up and consider at this time **HR 399**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 399, Honoring the students of San Antonio's Taft High School, as well as the Texas Department of Transportation and the Texas Transportation Institute, for their development of project Y.I.E.L.D.

HR 399 was adopted without objection.

On motion of Representative Menendez, the names of all the members of the house were added to **HR 399** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representatives Mercer and Menendez who introduced students of San Antonio's Taft High School.

HR 128 - ADOPTED (by Ritter)

Representative Ritter moved to suspend all necessary rules to take up and consider at this time **HR 128**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 128, Honoring the life of John Ellis Gray of Beaumont.

HR 128 was unanimously adopted by a rising vote.

(Speaker in the chair)

UNFINISHED BUSINESS

The following bill was laid before the house as unfinished business:

CSHB 4 ON SECOND READING (by Nixon, Allen, Capelo, Woolley, R. Cook, et al.)

CSHB 4, A bill to be entitled An Act relating to reform of certain procedures and remedies in civil actions.

(McCall in the chair)

Amendment No. 71

Representative Martinez Fischer offered the following amendment to **CSHB 4**:

Floor Packet Page No. 136

Amend **CSHB 4** as follows:

On page 27, line 13, strike Article 4 of the bill and substitute a new Article 4 to read as follows:

ARTICLE 4. PROPORTIONATE RESPONSIBILITY

SECTION 4.01 Section 33.001 is amended by adding subsections (a)-(h) to read as follows:

Sec. 33.001 Proportionate Responsibility

(a) Except as provided by Subsections (b) and (c), this chapter applies to any cause of action based on tort in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought.

(b) Notwithstanding Subsection (a), a defendant who, with the specific intent to do harm to others, or acts in concert with another person to engage in the conduct described in the following sections of the Penal Code shall be jointly and severally liable with such other person for the damages legally recoverable by the claimant that were proximately caused by such conduct:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.04 (aggravated kidnapping);

(4) Section 22.02 (aggravated assault);

(5) Section 22.011 (sexual assault);

(6) Section 22.021 (aggravated sexual assault);

(7) Section 22.04 (injury to child, elderly individual, or disabled individual);

(8) Section 32.21 (forgery);

(9) Section 32.43 (commercial bribery);

(10) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(11) Section 32.46 (securing execution of document by deception);

(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing); or

(13) conduct described in Chapter 31 the punishment level for which is a felony of the third degree or higher.

(c) This chapter does not apply to:

(1) an action to collect workers' compensation benefits under the workers' compensation laws of this state (Subtitle A, Title 5, Labor Code) or actions against an employer for exemplary damages arising out of the death of an employee;

(2) a claim for exemplary damages included in an action to which this chapter otherwise applies; or

(3) a cause of action for damages arising from the manufacture of methamphetamine as described by Chapter 99.

(d) Notwithstanding anything to the contrary stated in the sections of the Penal Code listed in Subsection (b), that subsection shall not apply unless the claimant proves the defendant acted or failed to act with intent to do harm as defined in this section.

(e) For purposes of this section, a person acts with intent to do harm with respect to the nature of the person's conduct and the result of the person's conduct when it is the person's conscious effort or desire to engage in such conduct for the purpose of doing substantial harm to others.

(f) Nothing in this section shall require a submission to the jury of a question regarding conduct by any party absent sufficient evidence to support the submission.

(g) The jury shall not be made aware through voir dire, introduction into evidence, instruction, or any other means that the conduct to which Subsection (b) applies is defined by the Penal Code.

(h) This chapter applies to an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code). In an action to which this chapter applies, a claimant may not recover damages if his percentage of responsibility is greater than 50 percent.

SECTION 4.02 Section 33.013 is amended by striking subsection (b) and amending subsection (c) to read as follows:

(c) Notwithstanding Subsections (a) ~~and (b)~~, each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if the percentage of responsibility attributed to the defendant is equal to or greater than 15 percent, ~~and:~~

~~(1) the claimant's personal injury, property damage, death, or other harm is caused by the depositing, discharge, or release into the environment of any hazardous or harmful substance as described in Section 33.011(7); or~~

~~(2) the claimant's personal injury, property damage, death, or other harm resulted from a toxic tort.~~

SECTION 4.03. Section 33.014 of the Civil Practice and Remedies Code is amended to read as follows:

Sec. 33.014 Election of Credit for Settlements If a claimant has settled with one or more persons, an election must be made as to which dollar credit is to be applied under Section 33.012(b). This election shall be made by any claimant defendant filing a written election before the issues of the action are submitted to the trier of fact and, when made, shall be binding on all defendants. If no claimant defendant makes this election or if conflicting elections are made, all claimants ~~defendants~~ are considered to have elected Subdivision (2) of Section 33.012(b).

Representative Gattis moved to table Amendment No. 71.

The motion to table was withdrawn.

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).

CSHB 4 - (consideration continued)**Amendment No. 72**

Representatives Giddings and Solomons offered the following amendment to Amendment No. 71:

Substitute for the Martinez Fischer amendment to **CSHB 4** (beginning on page 136, amendment packet) the following:

Amend **CSHB 4** by inserting on page 37, between lines 10 and 11, a new Section 4.111 to read as follows:

SECTION 4.111. It is not the intent or purpose of this article to affect workers compensation law.

Amendment No. 72 was adopted without objection.

Amendment No. 71, as amended, was adopted without objection.

Amendment No. 73

Representative Martinez Fischer offered the following amendment to **CSHB 4**:

Floor Packet Page No. 138

Amend **CSHB 4** as follows:

On page 27, between lines 14 and 15, add a new Section 4.01 of the bill to read as follows and renumber accordingly:

SECTION 4.01 Section 33.001, Civil Practices and Remedies Code is amended to read as follows:

In an action to which this chapter applies, a claimant may not recover damages if his percentage of responsibility is greater than 50 percent. This chapter does not apply to an action in which the harm was caused by reckless, willful, wanton or intentional conduct.

Representative Nixon moved to table Amendment No. 73.

The motion to table prevailed.

Amendment No. 74

Representative Canales offered the following amendment to **CSHB 4**:
Floor Packet Page No. 144

Amend **CSHB 4** as follows:

On page 30, strike lines 6-21.

Representative Gattis moved to table Amendment No. 74.

The motion to table prevailed.

MESSAGE FROM THE SENATE

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

CSHB 4 - (consideration continued)**Amendment No. 75**

Representative Martinez Fischer offered the following amendment to **CSHB 4**:

Floor Packet Page No. 147

Amend **CSHB 4** as follows:

On page 32, strike lines 10-11, and substitute the following:

The term "responsible third party" does not include the claimant's employer, if the employer maintained workers compensation insurance coverage, as determined by Section 401.011 (44), Labor Code, at the time of the act, event, or occurrence made the basis of the claimant's suit.

Representative Gattis moved to table Amendment No. 75.

A record vote was requested.

The motion to table prevailed by (Record 108): 88 Yeas, 54 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Campbell; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Madden; Marchant; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

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

Absent, Excused — Isett; Smithee.

Absent — Callegari; Capelo; Goolsby.

Amendment No. 76

Representative Y. Davis offered the following amendment to **CSHB 4**:

Floor Packet Page No. 149

Amend **CSHB 4** as follows:

On Page 34, Line 2, strike the word "or"

On Page 34, Line 2, insert a new subsection 2 to read as follows and renumber current subsection (2) as subsection (3):

(2) an action in which the claimant is a child under the age of 18

Amendment No. 77

Representative Y. Davis offered the following amendment to Amendment No. 76:

Amend Amendment 76 by Davis (beginning on page 149, Amendment Packet) by striking the text of the amendment and substituting the following:

Amend **CSHB 4** as follows:

(1) On page 34, line 2, strike the word "or".

(2) On page 34, between lines 2 and 3, insert the following new subdivisions appropriately numbered and renumber the existing Subdivision (2) appropriately:

() an action in which the claimant is a child under the age of 18;

() an action in which the claimant is disabled as defined by the Americans with Disabilities Act;

() an action in which the claimant is over the age of 65; or

Amendment No. 77 was adopted without objection.

Representative Gattis moved to table Amendment No. 76.

A record vote was requested.

The motion to table prevailed by (Record 109): 89 Yeas, 49 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hunter; Hupp; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Guillen; Gutierrez; Hochberg; Hodge; Hopson; Jones, J.; Lewis; Luna;

Mabry; Martinez Fischer; McClendon; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

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

Absent, Excused — Isett; Smithee.

Absent — Capelo; Deshotel; Giddings; Hughes; Laney; McReynolds; Quintanilla.

STATEMENT OF VOTE

When Record No. 109 was taken, I was in the house but away from my desk. I would have voted no.

Deshotel

Amendment No. 78

Representative Martinez Fischer offered the following amendment to **CSHB 4**:

Floor Packet Page No. 153

Amend **CSHB 4** as follows:

On Page 34, Line 2, strike the word "or"

On Page 34, Line 2, insert a new subsection 2 to read as follows and renumber current subsection (2) as subsection (3):

(2) an action in which the act or omission of the defendant, that is the basis of the action, is alleged to have been done intentionally or with malice, willful or wanton negligence or fraud;

Representative Gattis moved to table Amendment No. 78.

A record vote was requested.

The motion to table prevailed by (Record 110): 82 Yeas, 61 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Geren; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hill; Hope; Howard; Hughes; Hunter; Hupp; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Goodman; Guillen; Gutierrez; Hilderbran; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.;

Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

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

Absent, Excused — Isett; Smithee.

Absent — Capelo; Goolsby.

Amendment No. 79

Representative Mabry offered the following amendment to **CSHB 4**:

Floor Packet Page No. 159

Amend **CSHB 4** as follows:

On page 35, lines 8-11, strike subsection (f).

Representative Gattis moved to table Amendment No. 79.

A record vote was requested.

The motion to table prevailed by (Record 111): 87 Yeas, 56 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Madden; Marchant; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise.

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

Absent, Excused — Isett; Smithee.

Absent — Oliveira; Wolens.

(Speaker in the chair)

Amendment No. 80

On behalf of Representative Wise, Representative Dunnam offered the following amendment to **CSHB 4**:

Floor Packet Page No. 174

Amend **CSHB 4** as follows:

On page 39, line 13, strike the word "and" and before "82.009" insert ", and 82.010"

On page 42, between line 19 and 20 insert a new Sec. 82.010 to read as follows:

Sec. 82.010. APPLICATION. This chapter does not apply to:

(a) sellers of products made in foreign countries outside of the continental United States;

(b) sellers of products manufactured by laborers under the age of 18; or

(c) companies that had knowledge of the defect or danger of the product but didn't disclose the defect or danger.

Representative King moved to table Amendment No. 80.

A record vote was requested.

The motion to table prevailed by (Record 112): 90 Yeas, 52 Nays, 1 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Homer; Hope; Hopson; Howard; Hunter; Hupp; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Isett; Smithee.

Absent — Hill; Hughes; Oliveira; Wolens.

Amendment No. 81

Representative Hochberg offered the following amendment to **CSHB 4**:

Floor Packet Page No. 181

Amend **CSHB 4** as follows:

1. On Page 39, Line 21, insert a new subsection (2) to read as follows and renumber the remaining subsections accordingly:

(2) that the claimant was less than 18 years of age at the time of the injury that is the basis of the claim;

2. On Page 40, Line 15 before the word "In" insert "(a)"

3. On Page 41, after Line 3, insert a new subsection (b) to read as follows:
(b) This section does not apply to an action in which the claimant was less than 18 years of age at the time.

4. On Page 42 after Line 19 insert a new subsection (d) to read as follows:

(d) This section does not apply to an action in which the claimant was less than 18 years of age at the time.

Representative King moved to table Amendment No. 81.

(Bonnen in the chair)

A record vote was requested.

The motion to table prevailed by (Record 113): 82 Yeas, 61 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Rose; Seaman; Smith, T.; Smith, W.; Stick; Swinford; Taylor; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Goodman; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Solis; Solomons; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

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

Absent, Excused — Isett; Smithee.

Absent — Hughes; Truitt.

STATEMENT OF VOTE

When Record No. 113 was taken, I was in the house but away from my desk. I would have voted yes.

Truitt

Amendment No. 82

Representative Hochberg offered the following amendment to **CSHB 4**:
Floor Packet Page No. 182

Amend **CSHB 4** as follows:

1. On Page 39, Line 21, insert a new subsection (2) to read as follows and renumber the remaining subsections accordingly:

(2) that the claimant was over the age of 65 at the time of the injury that is the basis of the claim;

2. On Page 40, Line 15 before the word "In" insert "(a)"

3. On Page 41, after Line 3, insert a new subsection (b) to read as follows:
(b) This section does not apply to an action in which the claimant over the age of 65 at the time of the injury.

4. On Page 42, after Line 19 insert a new subsection (d) to read as follows:
(d) This section does not apply to an action in which the claimant over the age of 65 at the time of the injury.

Representative King moved to table Amendment No. 82.

A record vote was requested.

The motion to table prevailed by (Record 114): 82 Yeas, 58 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Marchant; McCall; Mercer; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farrar; Flores; Gallego; Garza; Giddings; Goodman; Guillen; Gutierrez; Haggerty; Hochberg; Hodge; Hopson; Jones, J.; Laney; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Solomons; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

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

Absent, Excused — Isett; Smithee.

Absent — Farabee; Homer; Lewis; Madden; Merritt.

Amendment No. 83

Representative Coleman offered the following amendment to **CSHB 4**:

Floor Packet Page No. 198

Amend **CSHB 4** as follows:

On page 41, strike lines 11-27.

On page 42, strike lines 1-19.

Amendment No. 83 was withdrawn.

Amendment No. 84

On behalf of Representative Wise, Representative Gallego offered the following amendment to **CSHB 4**:

Floor Packet Page No. 190

Amend **CSHB 4** as follows:

1. On Page 40, Line 15 insert "(a)" before the word "In".

2. On Page 41, after Line 3 insert a new subsection (b) to read as follows:

(b) This section does not apply to any product that is designed or intended to be used to induce a non-surgical or spontaneous abortion.

3. On Page 42 after Line 19 by inserting a new subsection (d) to read as follows:

(d) This section does not apply to any product that is designed or intended to be used to induce a non-surgical or spontaneous abortion.

4. On Page 92, Line 10, after the word "Amended" insert "and new Subsection 41.008 (c-1), Civil Practice and Remedies Code, is added."

5. Amend **CSHB 4** as follows on Page 92 after Line 18 by inserting a new Subsection (c-1) to read as follows:

(c-1) Subsection (b) does not apply to an action to which Chapter 82 applies if the product was designed or intended to be used to induce a non-surgical or spontaneous abortion.

Representative King moved to table Amendment No. 84.

A record vote was requested.

The vote of the house was taken on the motion to table Amendment No. 84 and the vote was announced yeas 71, nays 69.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 115): 70 Yeas, 69 Nays, 3 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Hamilton; Hamric; Harper-Brown; Heflin; Hegar; Hilderbran; Hill; Hopson; Hunter; Hupp; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Laubenberg; Madden; Marchant; Mercer; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Rose; Seaman; Smith, W.; Stick; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chisum; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Goodman; Guillen; Gutierrez; Haggerty; Hardcastle; Hartnett; Hochberg; Hodge; Homer; Hope; Howard; Hughes; Jones, J.; Kuempel; Laney; Lewis; Mabry; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Smith, T.; Solis; Solomons; Swinford; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

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

Absent, Excused — Isett; Smithee.

Absent — Chavez; Jones, D.; Merritt; Oliveira; Wise.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 115. I intended to vote no.

Christian

I was shown voting yes on Record No. 115. I intended to vote no.

Seaman

(Speaker in the chair)

The speaker stated that the motion to table prevailed by the above vote.

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. 11).

LEAVES OF ABSENCE GRANTED

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

Oliveira on motion of Gutierrez.

Wise on motion of P. Moreno.

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

Chavez on motion of Keel.

CSHB 4 - (consideration continued)

Amendment No. 85

Representative Farrar offered the following amendment to **CSHB 4**:
Floor Packet Page No. 184

Amend **CSHB 4** as follows:

1. On Page 39, Line 21, insert a new subsection (2) to read as follows and renumber the remaining subsections accordingly:

(2) that the claimant is a:

(A) licensed peace officer;

(B) fire protection personnel as defined by Section 419.021, Government Code;

(C) volunteer fire fighter certified by the Commission on Fire Protection, the State's firemen's or Fire Marshal's Association or by any other entity authorized by State law;

(D) emergency medical personnel; or

(E) person on active or reserve duty, or a veteran of the United States Military

2. On Page 40, Line 15 before the word "In" insert "(a)"

3. On Page 41, after Line 3, insert a new subsection (b) to read as follows:

(b) This section does not apply to a claimant who is a:

(1) licensed peace officer;

(2) fire protection personnel as defined by Section 419.021, Government Code;

(3) volunteer fire fighter certified by the Commission on Fire Protection, the State's firemen's or Fire Marshal's Association or by any other entity authorized by State law;

(4) emergency medical personnel; or

(5) person on active or reserve duty, or a veteran of the United States Military

4. On Page 42 after Line 19 insert a new subsection (d) to read as follows:

(d) This section does not apply to a claimant who is a:

(1) licensed peace officer;

(2) fire protection personnel as defined by Section 419.021, Government Code;

(3) volunteer fire fighter certified by the Commission on Fire Protection, the State's firemen's or Fire Marshal's Association or by any other entity authorized by State law;

(4) emergency medical personnel; or

(5) person on active or reserve duty, or a veteran of the United States Military

(Chavez now present)

Representative King moved to table Amendment No. 85.

A record vote was requested.

The motion to table prevailed by (Record 116): 92 Yeas, 50 Nays, 1 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp;

Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Luna; Madden; Marchant; McCall; Mercer; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Hopson; Jones, J.; Laney; Lewis; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Isett; Oliveira; Smithee; Wise.

Absent — Merritt; Moreno, P.

Amendment No. 86

Representatives Dunnam and Wise offered the following amendment to **CSHB 4**:

Floor Packet Page No. 188

Amend **CSHB 4** as follows:

On page 40, between lines 14 and 15, insert a new Section 82.0035 to read as follows:

Sec. 82.0035. (a) Section 82.003 does not apply if:

(1) the seller cannot identify the manufacturer;

(2) the manufacturer is not incorporated in the United States;

(3) the manufacturer has liability insurance limits applicable to the event in an amount less than \$5 million; or

(4) the manufacturer is insolvent.

(b) This section does not apply to sellers of the following products:

(1) drugs and pharmaceutical products;

(2) products intended for human consumption;

(3) motor vehicles;

(4) airplanes and helicopters;

(5) multi-piece rims;

(6) industrial equipment;

(7) agricultural vehicles and equipment; and

(8) firearms.

Amendment No. 86 was withdrawn.

Amendment No. 87

Representative Hochberg offered the following amendment to **CSHB 4**:

Floor Packet Page No. 189

Amend **CSHB 4** as follows:

On page 40, strike lines 15-27

On page 41, strike lines 1-3.

Representative King moved to table Amendment No. 87.

(Grusendorf in the chair)

A record vote was requested.

The motion to table prevailed by (Record 117): 86 Yeas, 55 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Haggerty; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Solomons; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

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

Absent, Excused — Isett; Oliveira; Smithee; Wise.

Absent — Capelo; Moreno, P.

Amendment No. 88

Representative Hochberg offered the following amendment to **CSHB 4**:
Floor Packet Page No. 192

Amend **CSHB 4** as follows:

On page 41, between lines 3 and 4 insert a new subsection (3) to read as follows:

(3) This section shall not apply in any products liability action alleging that the defendant or defendants had notice of the dangers, side effects or complications regarding the pharmaceutical product which were not disclosed fully to the United States Food and Drug Administration.

(Smithee now present)

PARLIAMENTARY INQUIRY

REPRESENTATIVE WOLENS: Mr. Speaker, I'd like to ask a parliamentary inquiry please.

CHAIR (Representative Grusendorf in the chair): State your inquiry.

WOLENS: Thank you. Mr. Speaker, it's true that when a bill has been recommitted it shall be considered by the committee as a new subject. Isn't that accurate?

CHAIR: What do you mean as a new subject, Mr. Wolens?

WOLENS: I mean the word, new subject, as it's used in Rule 8, Section 11, Subsection B that says after a bill has been recommitted it shall be considered by the committee as a new subject.

CHAIR: Let us look at our rules, Mr. Wolens. Would you like to bring your point of order, if you have one, down front?

WOLENS: No I'm just visiting with you. I want to make sure that I am reading the rules correctly. It is true that a bill which has been recommitted shall be considered by the committee as a new subject. Isn't that true?

CHAIR: That is what the rules state.

WOLENS: And as it being a new subject, isn't it also true that the committee reports would report only what has transpired in the committee after the bill has been recommitted to the committee? Isn't that accurate?

CHAIR: Is your question, Mr. Wolens, is that the committee report included actions that occurred at the prior meeting?

WOLENS: I didn't hear you. I'm sorry?

CHAIR: Is your—restate your question for us please.

WOLENS: Sure. When a bill has been recommitted and it is—well strike that—when a bill is a new subject the only thing that would be on the committee report would be, among others, what is transpired in the committee since the bill was recommitted. Isn't that true?

CHAIR: Probably, we don't know exactly what you are trying to get to, Mr. Wolens.

WOLENS: I'd just like to know what the rules are. I want to know what the rules are. Is it the rule that when there is a new subject before this house, that the committee report reflects what activities has occurred in the committee since the bill was recommitted to that committee? Isn't that true? And if it's not true, that's fine. I just want to know what the rules are on new subjects.

CHAIR: We're working on it, Mr. Wolens.

WOLENS: Thank you.

CHAIR: Mr. Wolens, the rule appears to require information from the most recent action. It does not, however, prohibit additional information.

WOLENS: And I would accept that. Tell me what the rule is on returning a bill to the committee. Is the bill that has been returned to the committee considered by the committee as new subject?

CHAIR: It's considered as if the original—as if the bill were as originally before the committee.

WOLENS: As it was what?

CHAIR: As it was originally before the committee.

WOLENS: If it was, if it's returned to the committee, it is considered as if it is originally in the committee? Is that what the chair has said?

CHAIR: That is correct.

WOLENS: And could you cite the rule and the section that says that? I am unable to find that in the rules.

CHAIR: I believe that is the meaning of the rule which you cited, Mr. Wolens.

WOLENS: I'm sorry, the rule that I am citing refers to a bill that has been recommitted. Are you suggesting that recommitted has the same meaning as returned, Mr. Speaker?

CHAIR: A bill which has been recommitted, Mr. Wolens, is recommitted by a motion. A bill that is returned to a committee could be returned by other action.

WOLENS: By what?

CHAIR: By other action.

WOLENS: And where does it say that in the bill? But before you tell me that, we agree that to commit a bill, to recommit a bill it must be on a motion. Is that accurate?

CHAIR: I believe that's accurate.

WOLENS: That would be Rule 7, Section 10?

CHAIR: There is a motion to recommit.

WOLENS: All right. Is there a motion to return?

CHAIR: For example, Mr. Wolens, if a bill has a point of order raised, it is automatically returned to committee without a motion.

WOLENS: Where in the procedures does it show how to return a bill?

CHAIR: And that would be as if it were recommitted.

WOLENS: So are you saying that return is the same, is it the rule of the house that to return a bill is the same as to recommit a bill? And if your ruling is yes—

CHAIR: The effect is the same as to—

WOLENS: I didn't ask you that. The question is, is it the ruling of the chair that to return a bill is the same as to recommit a bill—if those two words are used interchangeably.

(Speaker in the chair)

MR. SPEAKER: Those two words are occasionally used interchangeably.

WOLENS: All right, Mr. Speaker, and I'm happy to have you back. Mr. Speaker, is it true that bills are returned without a motion, but they can only be recommitted with a motion?

MR. SPEAKER: A bill that is returned to committee by an abstained point of order has the same effect as a motion to recommit.

WOLENS: All right. And is it the chair's—parliamentary inquiry.

MR. SPEAKER: State your inquiry.

WOLENS: Is it the chair's position that it takes a motion to recommit a bill? Isn't that accurate?

MR. SPEAKER: The rules do provide a motion to recommit.

WOLENS: And isn't it true that that's the only way to recommit a bill is by motion and a vote?

MR. SPEAKER: It is a way of returning it to committee and it has the same, the same effect as the point of order.

WOLENS: Mr. Speaker, if you could please so I know for the future, what are the other ways to recommit a bill if not upon motion and vote because it was my understanding that that was the only way to do it was pursuant to Rule 7, Section 10. So, if there are other ways, I would like to know how else a bill could be recommitted if not by motion and vote. Rule 7, Section 18. I'm sorry.

MR. SPEAKER: Mr. Wolens?

WOLENS: Yes, Mr. Speaker?

MR. SPEAKER: All right, the rules do not expressly provide for the motion to recommit. Rule 7, Section 18 provided for what happens if the motion has been defeated. Rule 7, Section 20 governs what happens if a bill is recommitted a second time. The motion to recommit is a standard motion not expressly provided for in the rules.

WOLENS: The motion to what, I'm sorry?

MR. SPEAKER: The motion to recommit.

WOLENS: Well, Mr. Speaker, the motion to recommit is specifically provided for under Rule 7, Section 3, Subsection 7. Isn't that accurate? That's Rule 7, Section 3, Subsection 7, on page 108 of the House Rules. It's specifically provided for there isn't it?

MR. SPEAKER: Just a moment, Mr. Wolens, we can only answer one thing at a time.

WOLENS: All right.

MR. SPEAKER: Rule 7, Section 3 lists the motion to recommit among those motions allowed during debate.

WOLENS: I agree. Mr. Speaker, let me ask you—**HB 4** before us, was this recommitted or was the bill returned from the house to the committee?

MR. SPEAKER: This bill was returned to committee following a sustained point of order.

WOLENS: And I agree. **HB 4** before us today on the printing on the very first page shows that it was recommitted. Isn't that true? I can hold it upright.

MR. SPEAKER: That is the heading historically used by the house.

WOLENS: But isn't it also true that this bill was not recommitted to the committee when it failed on a point of order?

MR. SPEAKER: The bill was returned to committee following a sustain of the point of order and the committee report printed carries the heading long used in house practice. The chair is not advised as how that practice came about.

WOLENS: All right. And just a couple more things as a parliamentary inquiry. Can the house, can the chair refer me, and I tell you, I can't find this, where the practice is or where it talks about returning a bill to a committee? I know that's practice, I just can't find it in the rulebook.

MR. SPEAKER: The practice, excuse me, Mr. Wolens?

WOLENS: Yes, Mr. Speaker?

MR. SPEAKER: The practice is referred to in Rule 4, Section 41, but it is a standard parliamentary procedure that is not expressly provided for.

WOLENS: Mr. Speaker, let me ask you, I just want to know how a return is treated. Is a bill that is returned considered by the committee as a new subject? And if it is, I want to know specifically where it says that because I don't believe it is.

MR. SPEAKER: A bill that is returned to committee is treated the same as if it was recommitted.

WOLENS: All right, and Mr. Speaker, and I do this with great respect, I would appreciate it being shown that, and this is why I'm asking you. The Rule 8, Section 11, Subsection B specifically says how to treat a bill that is recommitted. Specifically it says, after a bill has been recommitted it shall be considered by the committee as a new subject. It specifically says that. And as we look at legislative construction, legislative construction requires us to follow the specifics of the rules. And the rule specifically says how to treat a motion to recommit. It is treated as a new bill. It is silent on this thing called returning a bill, and I want the record clear how we are going to treat returned bills because I have got some examples with me from the past of returned bills. Returned bills have never been treated as recommitted bills. Never. We've never done that. They have always been considered, and they come back with the summary from the committee reflecting all activities of the committee. But as I have pointed out to this house, this bill before us today while it was shown as being returned, it is shown here as being recommitted and this is not what happened. It is not what happened. And, therefore, the committee summary is inaccurate. It would have been so easy for

the committee summary to have summarized all committee activities. So, I would like to know where in the rules specifically I can look to, to show that a bill that is returned is considered by the committee as a new subject. Is that anywhere in the rules?

MR. SPEAKER: It is not expressed in the rules.

WOLENS: Thank you. Mr. Speaker?

MR. SPEAKER: Mr. Wolens? Mr. Wolens, would you like Mr. Dutton to help you?

WOLENS: I am so sorry. Pardon me. I've got too much paper with me, Mr. Speaker. Mr. Speaker, I would then like to raise a point of order against this bill that we know was returned to the committee although on all of our pieces of paper it shows that it was recommitted to the committee. It's clear that that didn't happen. In particular so the record is clear, I rely on two rules that require the committee to accurately reflect in the summary that comes before us on the bill what activities occurred in the committee. This bill was sent back. It was returned to the committee, and the reason all of us know that it was returned to the committee is if we look at the formal summaries that are kept over there of all committee activity—if you look at the bill that you have in your packets right now, Mr. Speaker, it will show in the committee summary that the committee met on March the 20th, '03, and that is accurate as treated as a new action. It would be accurate if it was treated as a new subject. This, however, was returned, and in bringing it back returned, it should have also reflected that there were two other committee meetings: one on February 26th, one on March 4th. And therefore, it violates Rule 4, Section 32(b)(9) and Rule 12, Section 1(a)(1)(B) requiring complete records of the summary of the committee actions.

MR. SPEAKER: Bring your point of order down front Mr. Wolens.

WOLENS: Mr. Speaker, parliamentary inquiry.

MR. SPEAKER: State your inquiry.

WOLENS: I don't know if this is the proper time to ask this. I'm not rushing it. I just want it to be clear, and if this is a proper time and if it would otherwise be waived, I would like for my questions and your responses since I have started asking these parliamentary inquiries to be reduced to writing and be placed in the record. If this is not the appropriate time to ask that, or if it would otherwise not be waived, then I can do it later.

MR. SPEAKER: It is appropriate. You've heard the motion members. Is there an objection? Chair hears none. So ordered.

WOLENS: Thank you.

REMARKS ORDERED PRINTED

Representative Wolens moved to print remarks between Speaker Craddick and Representative Wolens.

The motion prevailed without objection.

CSHB 4 - POINT OF ORDER

Representative Wolens raised a point of order against further consideration of **CSHB 4** under Rule 4, Section 32(b)(9) and Rule 12, Section 1(a) of the House Rules on the grounds that the committee printing of **CSHB 4** refers to the bill as "recommitted" rather than "returned".

Rule 4, Section 32(b)(9) - Include a summary of the committee hearing on the bill or resolution.

Rule 4, Section 32(d) - It shall be the duty of the committee chair, on all matter reported by the committee, to see that all provisions of Rule 12 are satisfied. The chair shall strictly construe this provision to achieve the desired purposes.

Rule 12, Section 1(a)(1)(B) - a complete copy of the bill analysis, a complete copy of the summary of committee action, and a complete copy of the witness list.

Rule 2, Section 1(a)(3) mandates a "complete" record keeping of "action" taken on all bills and resolutions in the legislative process by the chief clerk. Their "complete" records indicate that the Committee on Civil Practices have met on three separate occasions to discuss **HB 4**. The House Committee Report, in the official "printed" version, reflects that only one hearing was held.

Since there was no motion to recommit **HB 4**, Rule 7 - Section 10, it cannot be considered a new subject, Rule 8, Section 11, therefore Rule 4, Section 32(b)(9) & (d) and Rule 12, Section 1(a)(1)(B) have been violated in that not "all" or "complete" record of the summary of committee action has been fulfilled by the chair.

(The speaker deferred the point of order disposition, see page 956)

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).

CSHB 4 - (consideration continued)

Amendment No. 89

Representative King offered the following amendment to Amendment No. 88:

Substitute for the Hochberg amendment (beginning on page 192, amendment packet) the following:

Amend **CSHB 4** as follows:

(1) On page 40, line 15, between "MEDICINES." and "In", insert " (a)".

(2) On page 41, between lines 3 and 4, insert:

(b) This section does not apply if the manufacturer, before or after premarket approval or licensing of the product, withheld from or misrepresented to the Food and Drug Administration required information that was material and relevant to the performance of the product and was causally related to the claimant's injury.

Amendment No. 89 was adopted without objection.

Amendment No. 88, as amended, was adopted without objection.

PARLIAMENTARY INQUIRY

REPRESENTATIVE WOLENS: Mr. Speaker?

SPEAKER CRADDICK: Mr. Wolens, for what purpose?

WOLENS: Parliamentary inquiry.

MR. SPEAKER: State your inquiry, Mr. Wolens.

WOLENS: I'm not going to ask a lot of questions though. I'd like to call the chair's attention if I could to Rule 4, Section 41. Rule 4, Section 41 was previously mentioned to me by the chair as relating to returning a bill from the floor to a committee. I'd like to point out the fact that this section only deals with a point of order raised that a complete committee substitute is not germane. So, I'd like to call it to the chair, to the attention of the chair that Rule 4, Section 41 that was previously cited, is not relevant to the conversation since we are not dealing with the return of a complete committee substitute. I would also like to note the following, Mr. Speaker, and I do this with a great deal of respect. After combing through the rules, I have found specific mention to the word return. And the reason I want to mention that to the chair is because it is my interpretation that if the word return has a specific use in the rules, then it cannot be used interchangeably with another word such as recommit, and for reference I would like for the chair to know that I found it in two spots. Rule 4, Section 41 uses the word return, and Rule 4, Section 41 in the House Precedents uses the word return. In that case, it was referring to Speaker Clayton sustaining a point of order, and in sustaining the point of order ruled that the bill would be returned to the Calendars Committee. What this seems to say is that this thing about returning on a point of order would go to a Calendars Committee. I have not raised that as a point of order yet, but I am calling that to the attention of the chair. And Mr. Speaker, if you would please recognize me to make a motion that this statement be included in the House Journal so that both of these points can be memorialized.

MR. SPEAKER: Mr. Wolens, come down front. Chair recognizes Mr. Wolens for a motion.

WOLENS: Mr. Speaker and members, if I could ask your indulgence if we could reduce my last comments from the back mic to writing. I did not ask a question. I was just putting on the record the only two references that I could find the word return, and I wanted that in the record so it is clear. I cannot find it in any other place, and I would move that my monologue be reduced to writing and placed in the record.

MR. SPEAKER: You've heard the motion members. Is there an objection? Chair hears none. So ordered.

REMARKS ORDERED PRINTED

Representative Wolens moved to print remarks between Speaker Craddick and Representative Wolens.

The motion prevailed without objection.

Amendment No. 90

Representative Luna offered the following amendment to **CSHB 4**:

Floor Packet Page No. 199

Amend **CSHB 4**, Article 5, as follows:

On page 41, line 11 through page 42, line 19 strike Sec. 82.009 and substitute a new Sec. 82.009 to read as follows:

Sec. 82.009. COMPLIANCE WITH GOVERNMENT STANDARDS.

(a) In a products liability action brought against a product manufacturer, distributor, or seller, there is a rebuttable presumption that the product manufacturer, distributor, or seller is not liable for any injury to a claimant caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer, distributor, or seller establishes that the product's formula, labeling, or design complied with mandatory safety standards or regulations adopted and promulgated by the federal government, or any agency of the federal government, that were applicable to the product at the time of manufacture, and that governed the particular product risk allegedly by the claimant to have caused harm. The claimant may rebut this presumption by establishing that:

(1) the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risks of injury or damage;

(2) the manufacturer, before or after marketing the product, withheld from or misrepresented to the government or agency information that was material and relevant to the performance of the product and was causally related to the claimant's injury;

(3) Congress included a "savings" provision, intending to permit state common law to apply to the field being regulated;

(4) with respect to the manufacturer of a motor vehicle, or a component thereof, after the product was sold and before the alleged injury occurred, that the manufacturer failed to provide the federal government, or the governing agency of the federal government, with all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment in the United States, or in a foreign country when the possible defect is in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States; or

(5) with respect to the manufacture of a tire, that the manufacturer failed to comply with the obligations set forth in the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.

(b) In a products liability action brought against a product manufacturer, distributor or seller, there is a rebuttable presumption that the product manufacturer, distributor, or seller is not liable for any injury to a claimant allegedly caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer, distributor, or seller establishes that the product was subject to pre-market licensing or approval by the federal

government or an agency of the federal government, that the manufacturer complied with all of the government's or agency's procedures and requirements with respect to pre-market licensing or approval, and that after full consideration of the product's risks and benefits the product was approved or licensed for sale by the government or agency. The claimant may rebut this presumption by establishing that:

(1) the standards or procedures used in the particular pre-market approval or licensing process were inadequate to protect the public from unreasonable risks of injury or damage;

(2) the manufacturer, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the government or agency information that was material and relevant to the performance of the product and was causally related to the claimant's injury;

(3) the Congress included a "savings" provisions, intending to permit state common law to apply to the field being regulated; or

(4) with respect to the manufacturer of a drug or medical device, after the product was sold and before the alleged injury occurred, that the manufacturer failed to provide the federal government, or the governing agency of the federal government, with all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proved to have been caused by a possible defect in such manufacturer's product.

(c) The rebuttal presumption created in sections (a) and (b) does not exist if the claimant demonstrates that the product has been withdrawn from the market.

(d) The rebuttable presumption created in sections (a) and (b) does not exist if the claimant demonstrates that the product manufacture acted with gross neglect or malice.

(e) This section does not extend to manufacturing flaws or defects even though the product manufacturer has complied with all quality control and manufacturing practices mandated by the state or federal governments or agencies.

Amendment No. 91

Representatives Luna and Turner offered the following amendment to Amendment No. 90:

Substitute for the Luna Amendment to **CSHB 4** (beginning on page 199, amendment packet) the following:

Amend **CSHB 4** on page 41, by striking lines 21-24 and substituting:
caused harm.

(a-1) The claimant may rebut the presumption in Subsection (a) by establishing that:

(1) the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risks of injury or damage;

(2) the manufacturer, before or after marketing the product, withheld information required by or misrepresented information provided to the federal government or agency that was:

(A) material and relevant to the federal government's or agency's determination that the mandatory safety standards or regulations at issue in the action were adequate; and

(B) causally related to the claimant's injury; or

(3) with respect to the manufacturer of a motor vehicle, or a component thereof, after the product was sold and before the alleged injury occurred, the manufacturer learned the vehicle or component part contained a defect causally related to the claimant's injury and to motor vehicle safety and failed to either:

(A) give notice to the federal government, or agency of the federal government, that adopted or promulgated the applicable safety standards or regulations; or

(B) give notice by first class mail to each person registered under Texas law as the owner and whose name and address are reasonably ascertainable by the manufacturer through state records or other available sources, or if the registered owner is not notified, to the most recent purchaser known to the manufacturer.

Amendment No. 91 was adopted without objection.

Amendment No. 92

Representative Eiland offered the following amendment to Amendment No. 90:

Substitute for the Luna Amendment to **CSHB 4** (beginning on page 199, amendment packet) the following:

Amend **CSHB 4** on page 41, by striking lines 21-24 and substituting:
caused harm.

(a-1) The claimant may rebut the presumption in Subsection (a) by establishing that:

(1) the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risks of injury or damage;

(2) the manufacturer, before or after marketing the product, withheld information required by or misrepresented information provided to the federal government or agency that was:

(A) material and relevant to the federal government's or agency's determination that the mandatory safety standards or regulations at issue in the action were adequate; and

(B) causally related to the claimant's injury; or

(3) with respect to the manufacturer of a motor vehicle, or a component thereof, after the product was sold and before the alleged injury occurred, the manufacturer learned the vehicle or component part contained a defect causally related to the claimant's injury and to motor vehicle safety and failed to either:

(A) give notice to the federal government, or agency of the federal government, that adopted or promulgated the applicable safety standards or regulations; or

(B) give notice by first class mail to each person registered under Texas law as the owner and whose name and address are reasonably ascertainable by the manufacturer through state records or other available sources, or if the registered owner is not notified, to the most recent purchaser known to the manufacturer.

(2) Beginning on page 41, strike from line 25 through page 42, line 16.

Representative King moved to table Amendment No. 92.

The motion to table prevailed.

Amendment No. 93

Representative Thompson offered the following amendment to Amendment No. 90:

Amend **CSHB 4** as follows:

On pages 545 and 546 of the packet, strike Sec. 82.009 and substitute a new Sec. 82.009 to read as follows:

Sec. 82.009. COMPLIANCE WITH GOVERNMENT STANDARDS.

(a) In a products liability action brought against a product manufacturer, distributor, or seller, in which the claimant alleges that an injury was caused by some aspect of the formulation, labeling, or design of a product, it is an affirmative defense to the claimant's allegation that the product's formula, labeling, or design complied with mandatory safety standards or regulations adopted and promulgated by the federal government, or an agency of the federal government, that were applicable to the product at the time of the manufacture, and that governed the particular product risk alleged by the claimant to have caused harm. Once the product manufacturer, distributor, or seller presents evidence to support this affirmative defense, the claimant may overcome the affirmative defense by establishing by a preponderance of the evidence that:

(1) the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risks of injury or damage;

(2) the manufacturer, before or after marketing the product, withheld from or misrepresented to the government or agency information that was relevant to the performance of the product and was causally related to the claimant's injury;

(3) Congress included a "savings" provision, intending to permit state common law to apply to the field being regulated;

(4) with respect to the manufacturer of a motor vehicle, or a component of a motor vehicle, after the product was sold and before the alleged injury occurred, that the manufacturer failed to provide the federal government, or the governing agency of the federal government, with all incidents of which the manufacturer receives actual or constructive notice which involve fatalities or serious injuries which are alleged to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment; or

(5) with respect to the manufacture of a tire, that the manufacturer failed to comply with the obligations set forth in the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.

(b) In a products liability action brought against a product manufacturer, distributor, or seller, in which the claimant alleges that an injury was caused by some aspect of the formulation, labeling, or design of a product, it is an affirmative defense to the claimant's allegation that the product was subject to pre-market licensing or approval by the federal government or an agency of the federal government, that the manufacturer complied with all of the government's or agency's procedures and requirements with respect to pre-market licensing or approval, and that, after full consideration of the product's risk and benefits, was approved or licensed for sale by the government or agency. Once the product manufacturer, distributor, or seller presents evidence to support this affirmative defense, the claimant may overcome the affirmative defense by establishing by a preponderance of the evidence that:

(1) the standards or procedures used in the particular pre-market approval or licensing process were inadequate to protect the public from unreasonable risks of injury or damage;

(2) the manufacturer, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the government or agency information that was relevant to the performance of the product and was causally related to the claimant's injury;

(3) Congress included a "savings" provision, intending to permit state common law to apply to the field being regulated; or

(4) with respect to the manufacturer of a drug or medical device, after the product was sold and before the alleged injury occurred, that the manufacturer failed to provide the federal government, or the governing agency of the federal government, with all incidents of which the manufacturer receives actual or constructive notice which involve fatalities or serious injuries which are alleged to have been caused by a possible defect in such manufacturer's product.

(c) The affirmative defense created in sections (a) and (b) does not exist if the claimant demonstrates that the product has been withdrawn from the market.

(d) The affirmative defense created in sections (a) and (b) does not exist if the claimant demonstrates that the product manufacturer acted with gross neglect or malice.

(e) This section does not extend to manufacturing flaws or defects even though the product manufacturer has complied with all quality control and manufacturing practices mandated by the state or federal governments or agencies.

Representative King moved to table Amendment No. 93.

A record vote was requested.

The motion to table prevailed by (Record 118): 91 Yeas, 52 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Krusee; Kuempel; Laubenberg; Luna; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Hopson; Jones, D.; Jones, J.; Kolkhorst; Laney; Lewis; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

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

Absent, Excused — Isett; Oliveira; Wise.

Absent — Farabee.

Amendment No. 90, as amended, was adopted without objection.

Amendment No. 94

Representative Canales offered the following amendment to **CSHB 4**:
Floor Packet Page No. 197

Amend **CSHB 4** as follows:

On page 41, line 10, before the period at the end of the sentence, add "unless the defendant had notice before the alleged harm to the claimant that the improvement or measure or the similar product would have made the claimant's harm less likely."

Representative King moved to table Amendment No. 94.

The motion to table prevailed.

Amendment No. 95

Representative Coleman offered the following amendment to **CSHB 4**:
Floor Packet Page No. 214

Amend **CSHB 4** as follows:

On page 43, line 12, strike ":" and substitute "the national average credit card rate as published in a national daily business periodical on the date the judgment is signed." and strike lines 13-23.

Representative Nixon moved to table Amendment No. 95.

(Van Arsdale in the chair)

The motion to table prevailed.

Amendment No. 96

On behalf of Representative Wise, Representative Dunnam offered the following amendment to **CSHB 4**:

Floor Packet Page No. 220

Amend **CSHB 4** as follows:

On page 45, between lines 21 and 22 insert a new subsection (e) to read as follows:

(e) This section shall not apply to any business or corporation indicted for corporate fraud.

Representative Allen moved to table Amendment No. 96.

A record vote was requested.

The motion to table prevailed by (Record 119): 89 Yeas, 52 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Capelo; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Turner; Uresti; Villarreal; Wilson.

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

Absent, Excused — Isett; Oliveira; Wise.

Absent — Bonnen; Thompson; Wolens.

Amendment No. 97

Representatives Noriega and Mabry offered the following amendment to **CSHB 4**:

Floor Packet Page No. 224

Amend **CSHB 4** as follows:

On page 46, Strike Article 8, lines 4-12.

Representative Nixon moved to table Amendment No. 97.

The motion to table prevailed.

HR 600 - ADOPTED

(by Chavez, Olivo, Luna, Alonzo, Thompson, et al.)

Representative Chavez moved to suspend all necessary rules to take up and consider at this time **HR 600**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 600, Honoring Dolores Huerta for her labor activism.

HR 600 was adopted without objection.

On motion of Representative Gallego, the names of all the members of the house were added to **HR 600** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Chavez who introduced Dolores Huerta and Rebecca Flores.

CSHB 4 - (consideration continued)

Amendment No. 98

Representative Hartnett offered the following amendment to **CSHB 4**:
Floor Packet Page No. 574

Amend **CSHB 4** on page 46, line 13, by striking ARTICLE 9 and substituting a new ARTICLE 9 to read as follows:

ARTICLE 9. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

SECTION 9.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 149 to read as follows:

CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

Sec. 149.001. DEFINITIONS. In this chapter:

(1) "Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

(A) property damage caused by the installation, presence, or removal of asbestos;

(B) the health effects of exposure to asbestos, including any claim
for:

(i) personal injury or death;

(ii) mental or emotional injury;

(iii) risk of disease or other injury; or

(iv) the costs of medical monitoring or surveillance; and
(C) any claim made by or on behalf of any person exposed to asbestos or any representative, spouse, parent, child, or other relative of the person.

(2) "Corporation" means a corporation for profit, including:

(A) a domestic business corporation organized under the laws of this state; or

(B) a foreign corporation organized under laws other than the laws of this state that has a certificate of authority to transact business in this state or is doing business in this state.

(3) "Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total assets is determined under Section 149.004, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

(4) "Transferor" means a corporation from which successor asbestos-related liabilities are assumed or incurred.

Sec. 149.002. APPLICABILITY. (a) The limitation in Section 149.003 applies to a merger or consolidation effected under the laws of this state or another jurisdiction.

(b) The limitation in Section 149.003 does not apply to:

(1) workers' compensation benefits paid by or on behalf of an employer to an employee under the Texas Workers' Compensation Act, Subtitle A, Title 5, Labor Code, or comparable workers' compensation law of another jurisdiction;

(2) any claim against a corporation that does not constitute a successor asbestos-related liability;

(3) an insurance corporation, as that term is used in the Insurance Code;
or

(4) any obligations under the National Labor Relations Act (29 U.S.C. Section 151 et seq.), as amended, or under any collective bargaining agreement.

Sec. 149.003. LIMITATION ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. (a) Except as provided by Subsection (b), the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total assets of the transferor determined as of the time of the merger or consolidation. The corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total assets of the prior transferor, determined as of the time of the earlier merger or consolidation.

Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL ASSETS. (a) A corporation may establish the fair market value of total assets for the purpose of the limitation under Section 149.003 through any method reasonable under the circumstances, including:

(1) by reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction;
or

(2) in the absence of other readily available information from which fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total assets include intangible assets.

(c) A showing by the corporation of a reasonable determination of the fair market value of total assets is prima facie evidence of their fair market value.

Sec. 149.005. CONTESTING FAIR MARKET VALUE. After a corporation has established a reasonable determination of the fair market value of total assets under Section 149.004, a claimant disputing that determination has the burden of establishing a different fair market value of the assets.

Sec. 149.006. ADJUSTMENT. (a) The fair market value of total assets at the time of a merger or consolidation increases annually at a rate equal to the sum of:

(1) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation; and

(2) one percent.

(b) The rate in Subsection (a) is not compounded.

(c) The adjustment of fair market value of total assets continues as provided under Subsection (a) until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total assets is determined.

Sec. 149.007. SCOPE OF CHAPTER. The courts in this state shall apply, to the fullest extent permissible under the United States Constitution, this state's substantive law, including the limitation under this chapter, to the issue of successor asbestos-related liabilities.

SECTION 9.02. Chapter 149, Civil Practice and Remedies Code, as added by this article, applies to all asbestos claims, including existing asbestos claims, and all litigation, including existing litigation, in the courts of this state, without regard to whether a suit was commenced before, on, or after the effective date of this article.

Amendment No. 98 was withdrawn.

(Speaker in the chair)

CSHB 4 - POINT OF ORDER DISPOSITION

The speaker overruled the point of order, speaking as follows:

Mr. Wolens raises a point of order under Rule 4, Sections 32(b)(9) and 32(d), and Rule 12, Section 1(a)(1)(B), in that **CSHB 4**, having been returned to committee rather than recommitted by motion, bears the inappropriate heading of "Recommitted" and the committee report should have included a summary of actions of the committee prior to its return.

As the chair noted in response to parliamentary inquiry, the "Recommitted" heading has long been used in house practice for bills that were returned to committee following the sustaining of a point of order.

The long-standing practice in the house is to return to committee bills against which a point of order is sustained. That practice is consistent with general principles of parliamentary procedure and, accordingly, is not specifically provided for in the rules of the house. There are but two references to the practice in the House Rules. Rule 4, Section 41, provides that if a point of order is sustained that a complete committee substitute is not germane, the bill is returned first to the Committee on Calendars, who may either set the original bill on a calendar or return the bill to substantive committee. Rule 4, Section 41, is present in the rules to provide a specific practice in those specific circumstances.

In the parliamentary inquiry dialogue with Mr. Wolens, the chair mentioned this rule only to show an example of a reference to a bill being returned to committee; the chair did not intend to suggest that rule was applicable to this point of order. The only other reference to the practice is in Rule 11, Section 6, which twice references the chief clerk's duties to retain copies of amendments to a measure that "is recommitted or returned to committee."

Similarly, the motion to recommit is a standard parliamentary motion not expressly provided for in the rules, but referenced for different purposes in Rule 4, Sections 29 and 30; Rule 7, Sections 3, 18, 19, and 20; Rule 8, Sections 11 and 16; and Rule 11, Sections 5 and 6.

At the heart of the point of order is the reference in Rule 8, Section 11, which provides "after a bill has been recommitted, it shall be considered by the committee as a new subject." The precise meaning of the phrase "new subject" is not provided, but the chair understands it to mean that a recommitted bill is considered by the committee as if being originally considered. Accordingly, the committee report need only include a summary of committee actions following the bill's return to committee. Mr. Wolens argues that the committee report on a bill that is returned to committee—as opposed to being recommitted—should include a summary of all prior actions of the committee in reference to the bill. The chair finds house precedent to indicate that a summary of committee action for a bill returned to committee need only include the actions after the bill was returned.

For example, in the 75th Legislature, **CSHB 1452** was returned to committee following a point of order being sustained. The bill had originally been reported from the committee in a formal meeting held April 9, 1997, and after being returned to committee was subsequently reported in a formal meeting held May 5. The committee report printing following the return showed only the

May 5 meeting, and made no reference to the earlier actions. The next session, a point of order was sustained against **HB 537**. The bill had been originally reported from committee on April 21, 1999, and following its return was again reported from that committee on May 5. The committee report summarizes only the May 5 meeting. The bill was passed by the house.

It is apparent that house practice has been for the committee report of a bill that has been returned to committee to summarize only committee actions that occur following the bill's return to committee. Of course, as noted in Mr. Wolens' comments, Rule 2, Section 1(a)(3) requires a complete record of all actions. The prior actions on **CSHB 4** are maintained in those records, and are available to the members and the public online, copies of which Mr. Wolens submitted.

Accordingly, the point of order is respectfully overruled.

Amendment No. 99

Representative Eiland offered the following amendment to **CSHB 4**:

Floor Packet Page No. 234

Amend **CSHB 4** as follows:

On page 46, lines 19, strike Subdivision (3) and insert a new Subdivision (3) to read as follows:

(3) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed, certified, registered or chartered by the State of Texas to provide health care as a registered nurse, hospital, dentist, a podiatrist, pharmacist, emergency medical services provider, or a nursing home or an officer, employee, or agent thereof acting in the course and scope of his employment.

(Woolley in the chair)

Representative Nixon moved to table Amendment No. 99.

The motion to table prevailed.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Agriculture and Livestock, meeting for today, upon adjournment, is postponed subject to the call of the chair.

CSHB 4 - (consideration continued)

Amendment No. 100

Representative Gallego offered the following amendment to **CSHB 4**:

Floor Packet Page No. 237

Amend **CSHB 4** as follows:

On page 48, strike lines 3-16 and substitute the following, starting on line 3:

(8) "Physician" means an individual [~~a person~~] licensed to practice medicine in this state or in the United States.

(Hamric in the chair)

Representative Nixon moved to table Amendment No. 100.

The motion to table prevailed.

COMMITTEE GRANTED PERMISSION TO MEET

Representative Woolley requested permission for the Committee on Calendars to meet while the house is in session.

Permission to meet was granted without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Calendars, at this time today, speakers committee room, for a formal meeting.

CSHB 4 - (consideration continued)

Amendment No. 101

Representative Deshotel offered the following amendment to **CSHB 4**:

Floor Packet Page No. 239

Amend **CSHB 4** as follows:

On page 48, strike lines 21-25 and substitute the following, starting on line 25:

(11) "Claimant" means a person, including a decedent's estate, seeking or who has sought recovery of damages in a health care liability claim.

Representative Nixon moved to table Amendment No. 101.

A record vote was requested.

The motion to table prevailed by (Record 120): 86 Yeas, 55 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hardcastle; Harper-Brown; Heflin; Hegar; Hill; Homer; Hope; Howard; Hunter; Hupp; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgenuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Guillen; Hartnett; Hilderbran; Hochberg; Hodge; Hopson; Hughes; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon;

McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Smithee; Solis; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

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

Absent, Excused — Isett; Oliveira; Wise.

Absent — Callegari; Giddings; Gutierrez.

STATEMENT OF VOTE

When Record No. 120 was taken, my vote failed to register. I would have voted yes.

Callegari

Amendment No. 102

Representative P. Moreno offered the following amendment to **CSHB 4**:
Floor Packet Page No. 241

Amend **CSHB 4** as follows:

On page 49, strike lines 26 and 27 and on page 50, strike lines 1-4.

On page 49, substitute the following, starting on line 26:

(18) "Noneconomic damages" means any loss or damage for past, present, and future physical pain and suffering, mental anguish and suffering.

REMARKS BY REPRESENTATIVE P. MORENO

Mr. Speaker, members, I am going to present to you the only expert on this floor regarding this topic. We have—we were called to solve a crisis in this state called the rising cost of malpractice insurance. And it is unfortunate that those of us that are lawyers have been blamed for this crisis. I am a lawyer. I am a proud lawyer. I work real hard to be a lawyer. And I have done more pro bono work than many, many other attorneys, or as far as I'm concerned, many other people in this state. I believe in what I do. It wasn't easy for me to become a lawyer, because you see, my friends, I received all my education after—after I got hurt. I was a high school dropout, and now I am here trying to solve a problem, and trying to tell you that what I am about to expound to you are facts. They tell me that this session is on TV, on the internet, and what have you, so I am going to address the doctors that are out there listening and to the wives of the doctors.

There is no person on this floor that is trying to harm doctors because we all need the doctors. I happen to believe that I am the one on this floor that needs doctors the most, and I am not about to hurt the doctors that have cured me, the doctors that have helped me, and none of you either. Fifty years ago, I received my last rites. Yes, my last rites. Why am I here? Because doctors helped me. And if you think that I am going to harm those people that have helped me, you are totally mistaken. I am going—I have told you that you are going to listen to an expert because I am going to try to dig into your minds and explain to you what pain and suffering is, what mental anguish is, what disfigurement is, because none of you—none of you have an understanding of what mental anguish is. All of you see this podium in the back. Some of you have seen me in that podium

maybe about three times in my 36 years that I have been here—35 years. Every time that I have gone to that podium in the back, my friends, that is mental anguish for me. It is very, very difficult for you people to set yourself in a position that has—a position on a person that has suffered an injury like I have, and go through life suffering with mental anguish. Being pushed down this hallway is mental anguish. It takes me two hours to get dressed in the morning. That is mental anguish. I need help to get in the car. That is mental anguish. You know why I never come up here and listen to the debates on the points of orders? Because I can't. And if you don't think that that is mental anguish on my part to sit over there and know that I cannot get on this podium, you're mistaken.

Some of you are getting older, and you are starting to have difficulty in walking and getting around. You are going to reach an age where you are going to be deprived of the ability to do the things that you are now doing. What we—what happens when you get hurt is that we accelerate age—age. You become a very old person because now you cannot react the way you used to when you were a youngster. My friends, mental anguish is the most difficult thing to face in a lifetime. And we are saying this bill that we have, that Mr. Nixon has, deprives a person of recovering mental anguish, or disfigurement, and what have you. Let me tell you one thing. I've seen a friend of mine that was shot down in Korea and he was burned. His face and his body got burned. He received I don't remember how many operations. He was so disfigured in his face and his hands that when we went to parties, we used to hide—we had to hide him from the youngsters because he would scare the youngsters. If you don't think—if you don't think that is mental anguish, you're mistaken. If you don't think that being disfigured is mental anguish, you are mistaken.

And you know what I—I am so grateful for the doctor that helped, but yet the doctors in this state and in this country have been misled. They have been misled by insurance companies. Our doctor friends are so busy—are so busy that they really do not take the time to read what is going on and they listen to their advisors and by God, they are not properly informed. Look at this guy, he used to portray Superman, I can't think of his name right now. You know the other day they showed him on television that he is now recovering. Eight years it took him because of the help of doctors to be able to taste something. Eight years. Eight years it took him to smell something. The doctors did that. You don't think that's mental anguish? You don't think so? Yes, it is, and what we are doing by this bill—we are going to take a person like this man that has been disfigured, that has been deprived of his ability to smell, of his ability to taste—people of this ability have become blind. We are going to deprive that person the ability to recover more than \$250,000.

And let me tell you it is an expensive venture. You see in these reports and you've heard Mr. Nixon say that money—that the recovery of money can make you whole. That is false, my friends. That is false. Money cannot make you whole. But let me tell you one thing—it certainly helps. It helps one hell of a lot. Because now the little money I have, I have to take people with me to eat. Yes, we drink a couple of beers, etc., etc., and I have to pay because I need them. I need them to help me. Do you know how much this chair costs? This chair cost

me 1,200 bucks out of my own pocket. I paid it. And I have insurance, and I have VA benefits, but I don't go through VA or the insurance company because they give you such a hassle to collect. Do you know how much a cushion cost me? \$460, my friends. That's what they cost. We need that money. The people that become incapacitated or disfigured or whatever, we need money. The money that they give us is not enough because you have to overcompensate. You have become—you have lost your ability to be a whole person. I am grateful to the good Lord that I am still here. I am very grateful because I am still here trying to help people. And there are so many false things that have been said about us. I've been practicing law close to 40 years. I have handled one malpractice lawsuit. I defended my doctor who passed away, and I won. Most of the lawyers that I hang around with have never, never filed a malpractice lawsuit. You heard the figure that—one of our members on the back mic was saying that here in Texas for the year 2002, we have jury verdicts and settlements, 886. That is the total—the total of malpractice lawsuits that have been settled with jury verdicts.

My friends, if we permit the noneconomic portion of this bill to deny mental anguish, pain, disfigurement—you, my friends, are going to deprive one person, one person of recovering money that that person deserves. Don't do that. Don't do that because I—I'm used to my life now. It is my life. But can you imagine going through life without—and being injured by a negligent person, let me not forget that, being injured by a negligent party or a negligent person, and being completely broke. You can't do that. You know there are people right now that a person goes and puts them in bed because they live by themselves. They put them in bed and they leave them there all night. They come in at 6 o'clock, 7 o'clock in the morning. They're there by themselves. They cannot get up if they want a glass of water—they can't.

So don't—don't permit this bill to go with the definition that now exists that states that the damages that can be recovered will not include pain and suffering, mental anguish, disfigurement, etc. Because I know that you people in here cannot be that cruel. You can't be. Be humane and help those—not me, forget about me—a person that is injured through the negligence of somebody else. Don't deprive them of having that little money to help themselves and get away from their pain and suffering. And I move to adopt this amendment.

REMARKS ORDERED PRINTED

Representative J. Moreno moved to print remarks by P. Moreno.

The motion prevailed without objection.

REMARKS BY REPRESENTATIVE DESHOTEL

Members, I just want you to understand that the way this is written and taking out what has been taken out of this bill—the loss of consortium or the loss of championship. This says that to a young girl whose father was injured by a medical malpractice doctor, but a jury found him negligent. And so he's confined to a bed. Her dreams of him walking down the aisle with her at her wedding—and I don't want to get emotional, but it's an emotional situation—what ya'll are about to do. It's to say that there is no value to that young lady, or young man who

plays football, makes a touchdown and wants to look in the stands to see his dad. Are we saying that's no value to that young man? It means nothing if you don't change this amendment.

I'm sorry. I've never gotten emotional making a speech, but you need to think about what you are doing. You're telling that young woman who dreams of daddy—I want you to walk me down the aisle. He's in a bed; he can't do it because some doctor may be intoxicated, may be not paying attention, may be not doing whatever, but a jury found him guilty of negligence. And you're telling that young woman that her dreams mean nothing. You're telling this young football player that wants his dad—see him in the stands and he scores for the first time in high school, but his dad isn't there. He's either dead or he's at home. He's confined because of some negligence. We're asking you to just be fair. Give us one vote for the families of Texas. One vote is all we're asking you for. Please do not take that loss of companionship away from these kids and these families. These children, these wives, a young woman marries the love of her life. They're 20 years old and, as a result of negligence of a physician, they would never have intimate relations in the rest of their life together. This is what you're doing if you don't take this amendment. Ladies and gentlemen, I don't think you want to do that. And I'm going to ask you that if he makes a motion to table that you do not table this amendment. At least one time. Give one vote for the families of Texas. One time, do what you know is right to do. Thank you, members.

(Isett now present)

Representative Nixon moved to table Amendment No. 102.

A record vote was requested.

The motion to table prevailed by (Record 121): 86 Yeas, 58 Nays, 3 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Hamilton; Hardcastle; Harper-Brown; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgenuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Haggerty; Hartnett; Hochberg; Hodge; Homer; Hopson; Hughes; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.;

Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Rodriguez; Smithee; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

Present, not voting — Mr. Speaker; Hamric(C); Jones, D.

Absent, Excused — Oliveira; Wise.

STATEMENT OF VOTE

I was shown voting yes on Record No. 121. I intended to vote no.

Hilderbran

Amendment No. 103

Representative Dunnam offered the following amendment to **CSHB 4**:

Floor Packet Page No. 243

Amend **CSHB 4** as follows:

On page 50, line 26, strike Subsection (a) and renumber the remaining subsections appropriately.

Amendment No. 103 was withdrawn.

Amendment No. 104

Representative Olivo offered the following amendment to **CSHB 4**:

Floor Packet Page No. 246

Amend **CSHB 4** as follows:

On page 51, strike lines 11-14 and substitute the following, starting on line 11:

(f)(1) Notwithstanding the provisions of Rule 202, Texas Rules of Civil Procedure, a deposition may not be taken of a physician or health care provider for the purpose of investigating a health care liability claim before the filing of lawsuit unless:

(a) Upon receipt of written notice as required under Section 4.01 of this Act, from a patient, patient's family or patient's representative, the physician or health care provider has failed, within the ten days specified in Section 4.01 of this Act, to provide complete, unaltered records; or

(b) Upon providing the records as required under Section 4.01 of this Act, the records are incomplete, inaccurate, illegible, show evidence of having been changed after the events which they purport to record, or fail to comply with any applicable rules, regulations, standards, policies or guidelines for proper completion of same; or

(c) Upon providing the records as required under Section 4.01 of this Act, it cannot be reasonably determined from the records provided what sequence of events occurred in the relevant treatment or events, or cannot be reasonably determined who was present, involved, participated in or observed the events in question.

(2) If the physician or health care provider fails to provide the records as required under Section 4.01 of this Act, the patient, the patient's family, or the patient's representative shall be entitled to Rule 202 depositions sufficient to provide the information needed for them to appropriately evaluate any potential health care liability claim and make decisions about inclusion or not of potential defendants.

Amendment No. 105

Representative Olivo offered the following amendment to Amendment No. 104:

Amend Amendment No. 104 by Olivo to **CSHB 4** (beginning on page 246, amendment packet) by striking the first line on page 2 of the amendment and substituting:

representative shall, notwithstanding Section 13.01(u) of this Act, be entitled to one deposition under Rule 202, Texas Rules of Civil Procedure, in addition to the deposition allowed under Section 13.01(u) of this Act, sufficient to provide the

Amendment No. 105 was adopted without objection.

Amendment No. 104, as amended, was adopted without objection.

Amendment No. 106

Representative Eiland offered the following amendment to **CSHB 4**:
Floor Packet Page No. 250

Amend **CSHB 4** as follows:

On page 51, strike lines 23-27 through page 52, strike lines 1-9.

On page 51, substitute the following, starting on line 23:

Sec. 7.03. FEDERAL OR STATE INCOME TAXES AND LITIGATION FEES AND EXPENSES. Notwithstanding any other law, in a health care liability claim, if a plaintiff seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, evidence of the income reported to a governmental entity in the form of a filed or amended tax return, social security earnings report, a W-2 or a 1099 form may be presented with competent expert testimony.

Amendment No. 106 was withdrawn.

Amendment No. 107

Representative Phillips offered the following amendment to **CSHB 4**:
Floor Packet Page No. 258

Amend **CSHB 4** as follows:

(1) On page 53, line 13, between "RECOVERY OF" and "MEDICAL", insert "PAST".

(2) On page 53, line 14, between "Recovery of" and "medical", insert "past".

Amendment No. 107 was withdrawn.

Amendment No. 108

On behalf of Representative P. Moreno, Representative Eiland offered the following amendment to **CSHB 4**:

Floor Packet Page No. 263

Amend **CSHB 4** as follows:

On page 54, line 19, strike SECTION 10.10 and insert a new SECTION 10.10, starting on line 19, to read as follows:

SECTION 10.10. Section 11.03, Medical Liability and Insurance Improvement Act (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11.03. LIMIT ON DAMAGES. [ALTERNATIVE PARTIAL LIMIT ON CIVIL LIABILITY]. ~~[In the event that Section 11.02(a) of this subchapter is stricken from this subchapter or is otherwise invalidated by a method other than through legislative means, the following shall become effective:]~~ In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability of each physician or health care provider for noneconomic damages shall be limited to an amount not to exceed \$250,000 except in health care liability claims where the injured patient is under 18 years of age or over 60 years of age, is mentally retarded as defined under Section 591.003(16), Health and Safety Code, or is mentally ill as defined under Section 571.003(14), Health and Safety Code or is disabled as defined by the Americans with Disabilities Act ~~[for all past and future noneconomic losses recoverable by or on behalf of any injured person and/or the estate of such person, including without limitation as applicable past and future physical pain and suffering, mental anguish and suffering, consortium, disfigurement, and any other nonpecuniary damage, shall be limited to an amount not to exceed \$150,000].~~

Amendment No. 109

On behalf of Representative Alonzo, Representative Eiland offered the following amendment to Amendment No. 108:

Amend Amendment No. 108 by P. Moreno to **CSHB 4** (beginning on page 263, amendment packet) on page 1 of the amendment, in the last line of the added text, by striking "is disabled as defined by the Americans with Disabilities Act" and substituting the following:

has a physical impairment that is likely to continue indefinitely and that results in substantial functional limitations in:

- (1) self-care;
- (2) mobility;
- (3) the capacity for independent living; or
- (4) economic self-sufficiency

Amendment No. 109 was adopted without objection.

Representative Nixon moved to table Amendment No. 108.

A record vote was requested.

The motion to table prevailed by (Record 122): 88 Yeas, 55 Nays, 3 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hardcastle; Harper-Brown; Heflin; Hegar; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hartnett; Hilderbran; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

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

Absent, Excused — Oliveira; Wise.

Absent — Canales.

REMARKS ORDERED PRINTED

Representative Garza moved to print remarks by Representative Deshotel.

The motion prevailed without objection.

Amendment No. 110

Representative Phillips offered the following amendment to **CSHB 4**:
Floor Packet Page No. 255

Amend **CSHB 4** as follows:

(1) On page 53, line 13, between "RECOVERY OF" and "MEDICAL", insert "PAST".

(2) On page 53, line 14, between "Recovery of" and "medical", insert "past".

Amendment No. 110 was adopted without objection.

Amendment No. 111

Representative Eiland offered the following amendment to **CSHB 4**:
Floor Packet Page No. 271

Amend **CSHB 4**, ARTICLE 10 as follows:

On page 54, line 19 through page 55, line 13, strike SECTION 10.10 and substitute a new SECTION 10.10 to read as follows:

SECTION 10.10. Section 11.03, Medical Liability and Insurance Improvement Act (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11.03. LIMIT ON DAMAGES. [~~ALTERNATIVE PARTIAL LIMIT ON CIVIL LIABILITY~~]. [~~In the event that Section 11.02(a) of this subchapter is stricken from this subchapter or is otherwise invalidated by a method other than through legislative means, the following shall become effective:~~] (a) Except as provided in Subsections (b) and (c), in an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability of each physician or health care provider for noneconomic damages shall be limited to an amount not to exceed \$250,000.

(b) The limitation set forth in subsection (a) of this section shall not apply to a health care liability claim against a physician or health care provider if that physician or health care provider:

(1) was impaired by alcohol or drugs during the time relevant to the health liability claim;

(2) was disciplined or reprimanded by the Texas State Board of Medical Examiners for alcohol or drug abuse with five years of the relevant health care liability claim;

(3) has paid or caused to be paid, by way of judgment or settlement, compensation in two or more health care liability claims in the twelve months preceding the filing of the relevant health care liability claim; or

(4) has paid or caused to be paid, by way of judgment or settlement, compensation in ten or more health care liability claims.

(c) The limitation set forth in Subsection (a) does not apply to a health care liability claim against a hospital that has paid a criminal penalty or fine of civil fine or settlement relating to Medicare or Medicaid fraud within five years of the incident giving rise to the relevant health care liability claim.

Representative Nixon moved to table Amendment No. 111.

A record vote was requested.

The motion to table prevailed by (Record 123): 89 Yeas, 52 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hardcastle; Harper-Brown; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgenuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Guillen; Gutierrez; Hartnett; Hochberg; Hodge; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

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

Absent, Excused — Oliveira; Wise.

Absent — Farabee; Giddings; Homer; Smithee.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Appropriations, will not meet tonight upon adjournment but will meet tomorrow at 8 a.m.

CSHB 4 - (consideration continued)

Amendment No. 112

Representative Goodman offered the following amendment to **CSHB 4**:

Floor Packet Page No. 293

Amend **CSHB 4** as follows:

(1) On page 59, between lines 13 and 14, insert a new SECTION 10.13 of the bill to read as follows:

SECTION 10.13. Subchapter K, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 11.041 to read as follows:

Sec. 11.041. ADJUSTMENT OF LIABILITY LIMITS ON NONECONOMIC DAMAGES. When there is an increase or decrease in the consumer price index with respect to the amount of that index on the effective date of this section, each liability limit prescribed in Section 11.03 or Section 11.031 of this subchapter shall be increased or decreased, as applicable, by a sum equal to the amount of the limit multiplied by the percentage increase or decrease in the consumer price index between the effective date of this section and the time at which damages subject to the limits are awarded by final judgment or settlement.

(2) Renumber the subsequent SECTIONS of the bill appropriately.

Representative Nixon moved to table Amendment No. 112.

The motion to table prevailed.

Amendment No. 113

Representative Eiland offered the following amendment to **CSHB 4**:

Floor Packet Page No. 296

Amend **CSHB 4** on page 59, between lines 13 and 14, by inserting the following new SECTION, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION 10.____. Subchapter K, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 11.08 to read as follows:

Sec. 11.08. APPLICATION TO CERTAIN CLAIMS. This subchapter does not apply in an action on a health care liability claim brought by a person who does not seek economic damages except for those health care related expenses that will be paid to a third party.

Representative Nixon moved to table Amendment No. 113.

A record vote was requested.

The motion to table prevailed by (Record 124): 84 Yeas, 60 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hardcastle; Harper-Brown; Heflin; Hegar; Hill; Hope; Howard; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Brown, F.; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farrar; Flores; Gallego; Garza; Guillen; Gutierrez; Hartnett; Hilderbran; Hochberg; Hodge; Homer; Hopson; Hughes; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Smithee; Solis; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

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

Absent, Excused — Oliveira; Wise.

Absent — Giddings.

Amendment No. 114

Representative Alonzo offered the following amendment to **CSHB 4**:
Floor Packet Page No. 297

Amend **CSHB 4** as follows:

On page 59, line 14, strike SECTION 10.13 and insert a new SECTION 10.13 to read as follows:

SECTION 10.13. Subchapter L, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 12.02 to read as follows:

Sec. 12.02. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY MEDICAL CARE. In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising out of the provision of emergency medical care, the person bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the person shows by clear and convincing evidence that the physician or health care provider did not use the degree of care and skill that is reasonably expected of an ordinarily prudent physician or health care provider in the same or similar circumstances, provided that if the person bringing the suit has previously established a physician-patient relationship with the physician or health care provider or his partner or associate or on-call designated representative that proof shall be by a preponderance of the evidence.

Amendment No. 115

Representative Alonzo offered the following amendment to Amendment No. 114:

Amend Amendment No. 114 as follows:

On page 59, line 14, strike SECTION 10.13 and insert a new SECTION 10.13 to read as follows:

SECTION 10.13. Subchapter L, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Section 12.02 to read as follows:

Sec. 12.02. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY MEDICAL CARE. In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising out of the provision of emergency medical care, the person bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the person shows by clear and convincing evidence that the physician or health care provider did not use the degree of care and skill that is reasonably expected of an ordinarily prudent physician or health care provider in the same or similar circumstances, provided that if the person bringing the suit has previously established a physician-patient relationship with the physician ~~or health care provider or his partner or associate or on-call designated representative~~ that proof shall be by a preponderance of the evidence.

Amendment No. 115 was adopted without objection.

Representative Nixon moved to table Amendment No. 114.

A record vote was requested.

The motion to table prevailed by (Record 125): 91 Yeas, 49 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Guillen; Gutierrez; Hochberg; Hodge; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

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

Absent, Excused — Oliveira; Wise.

Absent — Bailey; Dawson; Garza; Giddings; Jones, D.

Amendment No. 116

Representative Dutton offered the following amendment to **CSHB 4**:

Floor Packet Page No. 311

Amend **CSHB 4** as follows:

On page 72, line 1, strike Subchapter R and insert a new Subchapter R to read as follows:

SUBCHAPTER R. PAYMENT FOR FUTURE LOSSES

Sec. 18.01. Definitions. In this subchapter:

(1) "Future damages" means damages that are incurred after the date of judgment for:

(A) medical, health care, or custodial care services;

(B) physical pain and mental anguish, disfigurement, or physical impairment;

(C) loss of consortium, companionship, or society; or

(D) loss of earnings.

Sec. 18.02. SCOPE OF CHAPTER. This subchapter applies only to an action or a health care liability claim against a physician or health care provider in which the award of future damages exceeds \$1,000,000.

Sec. 18.03. COURT ORDER FOR PERIODIC PAYMENTS. (a) On the motion of a party or on its own motion, the court may, in the exercise of its discretion, order that future damages awarded in a health care liability judgment

be paid in whole or in part in periodic payments rather than by a lump-sum payment. The allocation of a future damages award between future periodic payments and a lump-sum award shall be made by the court.

(b) Before issuing an order, the court shall receive evidence to determine how to provide for the payment of future damages, including, but not limited to the advantages and disadvantages of lump-sum and future payments, the plaintiffs' education and sophistication, medical needs, respective investment objectives, investment and trading experience and knowledge, financial situation, including estimated annual income from all sources, estimated net worth (exclusive of family residence), and estimated liquid net worth (cash, securities, other), tax status, employment status (name of employer, self-employed or retired), marital status and number of dependents, and age. The court shall consider the recommendation by a guardian ad litem appointed by the court on behalf of a recipient concerning the treatment of the future damages award if such guardian ad litem has a Series 7 securities license issued by the National Association of Securities Dealers, or comparable expertise.

(c) Any decision rendered by a trial court under this section shall not be subject to appeal or liabilities, unless it is shown that the court abused its discretion in ordering such periodic payment.

(d) In the judgment ordering the payment of future damages by periodic payments the court shall specifically state:

- (1) the recipient or beneficiary of the payments;
- (2) the dollar amount of each scheduled payment;
- (3) the commencement date of future payments, the interval between payments and the schedule of payments;
- (4) the number of payments and the term or period of time over which payments are to be made; and
- (5) the rated age or life expectancy of the recipient;
- (6) the cost of the annuity instrument used to purchase or fund the obligation to make future payments; and
- (7) the name of the insurer from which the annuity or funding instrument is purchased and the financial rating of the annuity issuer.

Sec. 18.04. FINANCIAL RESPONSIBILITY. (a) As a condition to authorizing periodic payments of future damages, the court shall require a defendant who is not adequately insured for the duration of the term of future payments to provide evidence of financial responsibility in an amount adequate to assure full payment of damages awarded by the judgment. A court may order that security, in the form of cash or property, be given to guarantee full satisfaction of the judgment obligation to make future payments for the duration of the term.

(b) The judgment must provide sufficient guaranty for future payments which must be funded by:

- (1) an annuity contract issued by a company licensed to do business as an insurance company;
- (2) an obligation of the United States;

(3) applicable and collectible liability insurance from one or more qualified insurers; or

(4) any other satisfactory form of funding approved by the court.

Sec. 18.05. DEATH OF RECIPIENT. (a) On the death of the recipient or beneficiary, money damages awarded for loss of future earnings, physical pain and mental anguish, disfigurement, or physical impairment shall continue to be paid, in full, for the duration of the term for future payments to the estate of the recipient or beneficiary of the award without reduction or discount.

(b) If the recipient dies before all payments required by the judgment for future medical care are paid, the court may modify the judgment to terminate payment of unpaid portion of the periodic payments for future medical care.

(c) If the court terminates the obligation to make future payments for medical care under this section, the court shall require the defendant to pay the estate of the recipient or beneficiary a lump-sum amount equal to the present value of the benefit realized by the defendant due to the termination of the future payment obligation.

Sec. 18.06. AWARD OF ATTORNEYS FEES. For purposes of computing the attorney's fees when the plaintiff is awarded a judgment that will be paid in periodic payments pursuant to this section, attorney's fees shall be calculated on the amount awarded for all future damages and shall be paid at the time the judgment is entered. The court shall ensure that sufficient lump-sum funds are allocated in the judgment to pay attorney's fees and litigation costs at the time the judgment is entered.

Sec. 18.07. EXECUTION. In the event a defendant defaults or fails to timely make a required future payment, the recipient or beneficiary of the judgment or their legal representative shall be entitled to pursue full execution of the judgment regardless of whether the failure to timely make a required future payment is the fault of another and regardless of amounts paid at the time of default.

Representative Nixon moved to table Amendment No. 116.

The motion to table prevailed.

Amendment No. 117

Representative Talton offered the following amendment to **CSHB 4**:

Floor Packet Page No. 316

Amend **CSHB 4** (House Committee Report, 1st Printing) by striking page 75, line 18 through page 76, line 10.

Representative Nixon moved to table Amendment No. 117.

A record vote was requested.

The motion to table was lost by (Record 126): 65 Yeas, 77 Nays, 3 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Brown, B.; Callegari; Campbell; Capelo; Chisum; Christian; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Flynn; Gattis; Goolsby; Griggs; Grusendorf;

Haggerty; Hamilton; Harper-Brown; Heflin; Hegar; Hill; Hope; Howard; Hunter; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Krusee; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Reyna; Rose; Seaman; Smith, T.; Smith, W.; Swinford; Taylor; Truitt; Van Arsdale; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Branch; Brown, F.; Burnam; Canales; Casteel; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Geren; Goodman; Guillen; Gutierrez; Hardcastle; Hartnett; Hilderbran; Hochberg; Hodge; Homer; Hughes; Hupp; Jones, D.; Jones, J.; Kolkhorst; Kuempel; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Smithee; Solis; Solomons; Stick; Talton; Telford; Thompson; Turner; Uresti; Villarreal; West; Wilson; Wolens.

Present, not voting — Mr. Speaker; Cook, B.; Hamric(C).

Absent, Excused — Oliveira; Wise.

Absent — Giddings; Hopson.

STATEMENT OF VOTE

When Record No. 126 was taken, my vote failed to register. I would have voted no.

Hopson

A record vote was requested.

Amendment No. 117 was adopted by (Record 127): 85 Yeas, 53 Nays, 2 Present, not voting.

Yeas — Alonzo; Branch; Brown, F.; Burnam; Canales; Castro; Chavez; Christian; Coleman; Cook, B.; Cook, R.; Davis, J.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Gattis; Geren; Goodman; Goolsby; Guillen; Gutierrez; Hartnett; Hilderbran; Hochberg; Hodge; Homer; Hope; Hopson; Hughes; Hupp; Isett; Jones, D.; Jones, J.; Kolkhorst; Kuempel; Laney; Lewis; Luna; Mabry; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Moreno, J.; Moreno, P.; Naishtat; Olivo; Paxton; Peña; Pickett; Pitts; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Seaman; Solis; Solomons; Stick; Talton; Telford; Thompson; Turner; Uresti; Villarreal; West; Wilson; Wolens.

Nays — Allen; Baxter; Berman; Bohac; Bonnen; Brown, B.; Callegari; Campbell; Casteel; Chisum; Corte; Crabb; Crownover; Dawson; Delisi; Denny; Driver; Flynn; Griggs; Grusendorf; Hamilton; Hardcastle; Harper-Brown; Heflin; Hegar; Hill; Howard; Hunter; Keffer, B.; Keffer, J.; King; Krusee; Laubenberg; Marchant; Merritt; Miller; Morrison; Mowery; Nixon; Phillips; Reyna; Riddle; Smith, T.; Smith, W.; Smithee; Swinford; Taylor; Truitt; Van Arsdale; Wohlgemuth; Wong; Woolley; Zedler.

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

Absent, Excused — Oliveira; Wise.

Absent — Bailey; Capelo; Giddings; Haggerty; Jones, E.; Keel; Noriega.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 127. I intended to vote no.

Christian

I was shown voting yes on Record No. 127. I intended to vote no.

Gattis

I was shown voting yes on Record No. 127. I intended to vote no.

Hope

I was shown voting yes on Record No. 127. I intended to vote no.

Kuempel

I was shown voting yes on Record No. 127. I intended to vote no.

Mercer

I was shown voting yes on Record No. 127. I intended to vote no.

Pitts

I was shown voting yes on Record No. 127. I intended to vote no.

Seaman

Amendment No. 118

On behalf of Representative Y. Davis, Representative Alonzo offered the following amendment to **CSHB 4**:

Floor Packet Page No. 321

Amend **CSHB 4** as follows:

On page 79, line 16 through page 80, line 13, strike ARTICLE 10, SECTION 10.23 and replace it with a new SECTION 10.23 to read as follows:

SECTION 10.23. Section 84.004(c), Civil Practices and Remedies Code, is amended to read as follows:

(c) Except as provided by Subsection (d) and Section 84.007, a volunteer health care provider ~~[who is serving as a direct service volunteer of a charitable organization]~~ is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient if:

(1) the volunteer was acting in good faith and in the course and scope of the volunteer's duties or functions within the organization

(2) the volunteer commits the act or omission in the course of providing health care services to the patient;

(3) the services provided are within scope of the license of the volunteer; and

(4) before the volunteer provides health care services, the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient [~~patient's parent, managing conservator, legal guardian, or other person with legal responsibility for the care of~~] signs a written statement that acknowledges:

(A) that the volunteer is providing care that is not administered for or in expectation of compensation; and

(B) the limitations on the recovery of damages from the volunteer in exchange for receiving the health care services.

Amendment No. 118 was adopted without objection.

Amendment No. 119

Representative Dunnam offered the following amendment to **CSHB 4**:

Floor Packet Page No. 327

Amend **CSHB 4**, ARTICLE 10 as follows:

On page 81, line 4-9, strike SECTION 10.25 in its entirety and renumber the subsequent SECTIONS appropriately.

Amendment No. 119 was withdrawn.

Amendment No. 120

Representative Eiland offered the following amendment to **CSHB 4**:

Floor Packet Page No. 335

Amend **CSHB 4**, ARTICLE 10 as follows:

On page 82, lines 5-6, strike Subdivision (1) and replacing it with a new Subdivision (1) to read as follows:

(1) the number of health care liability claims (frequency) has increased since 1997 at a rate of 4.6% per year;

Representative Nixon moved to table Amendment No. 120.

A record vote was requested.

The motion to table prevailed by (Record 128): 88 Yeas, 55 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eiland; Eissler; Elkins; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Naishtat; Noriega; Olivo; Peña; Pickett; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Smithee; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

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

Absent, Excused — Oliveira; Wise.

Absent — Moreno, P.; Puente.

Amendment No. 121

Representative Isett offered the following amendment to **CSHB 4**:

Floor Packet Page No. 323

Amend **CSHB 4** as follows:

(1) Beginning on page 79, line 16, and ending on page 80, line 13, strike SECTION 10.23 of the bill.

(2) On page 96, between lines 12 and 13, insert a new ARTICLE 16 to read as follows:

ARTICLE 16. CHARITABLE IMMUNITY AND LIABILITY

SECTION 16.01. Sections 84.004(a), (c), and (d), Civil Practice and Remedies Code, are amended to read as follows:

(a) Except as provided by Subsection (d) and Section 84.007, a volunteer [~~who is serving as an officer, director, or trustee~~] of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's [~~his~~] duties or functions [~~as an officer, director, or trustee~~] within the organization.

(c) Except as provided by Subsection (d) and Section 84.007, a volunteer health care provider [~~who is serving as a direct service volunteer of a charitable organization~~] is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient if:

(1) [~~the volunteer was acting in good faith and in the course and scope of the volunteer's duties or functions within the organization;~~

[~~(2)~~] the volunteer commits the act or omission in the course of providing health care services to the patient;

[~~(2)~~] [~~(2)~~] the services provided are within the scope of the license of the volunteer; and

[~~(3)~~] [~~(4)~~] before the volunteer provides health care services, the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for [~~patient's parent, managing conservator, legal guardian, or other person with legal responsibility for the care of~~] the patient signs a written statement that acknowledges:

(A) that the volunteer is providing care that is not administered for or in expectation of compensation; and

(B) the limitations on the recovery of damages from the volunteer in exchange for receiving the health care services.

(d) A volunteer of a charitable organization is liable to a person for death, damage, or injury to the person or the person's [his] property proximately caused by any act or omission arising from the operation or use of any motor vehicle [motor driven equipment], including an airplane, to the extent [~~insurance coverage is required by Chapter 601, Transportation Code, and to the extent~~] of any existing insurance coverage applicable to the act or omission.

SECTION 16.02. Section 84.007(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) This chapter does not apply to an act or omission that is intentional, wilfully [~~or wantonly~~] negligent, or done with conscious indifference or reckless disregard for the safety of others.

SECTION 16.03. The following provisions of the Civil Practice and Remedies Code are repealed:

- (1) Section 84.003(4); and
- (2) Section 84.004(b).

SECTION 16.04. This article applies only to a cause of action that accrues on or after the effective date of this article. An action that accrued before the effective date of this article is governed by the law applicable to the action immediately before the effective date of this article, and that law is continued in effect for that purpose.

(3) Renumber the ARTICLES of the bill appropriately.

Amendment No. 122

Representative Isett offered the following amendment to Amendment No. 121:

Amend Amendment No. 121 by Isett to **CSHB 4** (beginning on page 323, amendment packet) as follows:

(1) On page 1 of the amendment, strike "84.004(a), (c), and (d)" and substitute "84.004(a) and (c)".

(2) On page 2 of the amendment, strike lines 10-17.

Amendment No. 122 was adopted without objection.

Amendment No. 121, as amended, was adopted without objection.

Amendment No. 123

Representative Eiland offered the following amendment to **CSHB 4**:
Floor Packet Page No. 332

Amend **CSHB 4**, ARTICLE 10 as follows:

On page 82, line 3 through page 86, line 13, strike SECTION 10.28 and substitute a new SECTION 10.28 to read as follows:

SECTION 10.28. (a) The Legislature of the State of Texas finds that:

(1) the number of health care liability claims (frequency) has increased since 1997 at a rate of 4.6% per year;

(2) Medical negligence in Texas is a contributing factor affecting medical professional liability rates;

(3) the amounts being paid out by insurers in judgments, settlements, and defense costs (severity) have increased at a rate of 5.9% per year since 1997;

(4) some medical negligence insurance carriers have raised premiums more than 100%;

(5) the situation has created a medical malpractice insurance crisis in Texas;

(6) this crisis has had a substantial impact on the physicians and hospitals of Texas and the cost to physicians and hospitals for adequate medical malpractice insurance has dramatically risen in price;

(7) satisfactory insurance coverage for adequate amounts of insurance in this area is often available at an unaffordable price; and

(8) the adoption of certain modifications in the medical, insurance, and legal systems, the total effect of which is currently undetermined, will have an unknown effect on the rates charged by insurers for medical professional liability insurance.

(b) Because of the conditions stated in Subsection (a) of this section, it is the purpose of this article to improve and modify the system by which health care liability claims are determined in order to:

(1) reduce excessive frequency and severity of health care liability claims through reasonable improvements and modifications in the Texas insurance, tort, and medical practice systems;

(2) decrease the cost of those claims and ensure that awards are rationally related to actual damages;

(3) make available to physicians, hospitals, and other health care providers protection against potential liability through the insurance mechanism at reasonably affordable rates;

(4) reduce the time required for plaintiffs to obtain awards; and

(5) reduce or eliminate the incentive for physicians and other health care providers to go without insurance.

Amendment No. 124

Representative Nixon offered the following amendment to Amendment No. 123:

Substitute for the Eiland Amendment to **CSHB 4** (beginning on page 332, amendment packet) the following:

Amend **CSHB 4** as follows:

On page 82, between lines 2 and 3, insert a new SECTION 10.271 of the bill to read as follows:

SECTION 10.271. Section 242.0372, Health and Safety Code, is repealed.

Amendment No. 124 was adopted without objection.

Amendment No. 123, as amended, was adopted without objection.

Amendment No. 125

Representative Eiland offered the following amendment to **CSHB 4**:

Floor Packet Page No. 337

Amend **CSHB 4**, ARTICLE 10 as follows:

On page 82, lines 10-12 strike Subdivision (3) and replace it with a new Subdivision (3) to read as follows:

(3) the amounts paid out by insurers in judgments, settlements, and defense costs (severity) have increased at a rate of 5.9% since 1997;

Representative Nixon moved to table Amendment No. 125.

A record vote was requested.

The motion to table prevailed by (Record 129): 84 Yeas, 58 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Haggerty; Hamilton; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Smithee; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

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

Absent, Excused — Oliveira; Wise.

Absent — Grusendorf; Moreno, P.; Swinford.

Amendment No. 126

Representative Eiland offered the following amendment to **CSHB 4**:

Floor Packet Page No. 602

Amend **CSHB 4** on page 86, between lines 13 and 14, by inserting the following new SECTION, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION 10.__. Subchapter C, Section 71.035(a), Texas Government Code, is amended to read as follows:

(a) The council shall gather judicial statistics and other pertinent information from the several state judges and other court officials of this state.

(1) ~~[In addition, t-]~~ The council shall implement a monthly tracking system to ensure accountability for the counties and courts which participate in the statewide integrated system for child support and medical support enforcement established under Section 231.001, Family Code. As a duty of office, the district clerks and county clerks serving the affected courts shall report monthly such information as may be required by the counsel, including, at a minimum, the time required to enforce cases from date of delinquency, from date of filing, and from date of service until date of disposition. Such information as is necessary to complete the report and not directly within the control of the district or county clerk, such as date of delinquency, shall be provided to the clerk by the child support registry or by the enforcement agency providing Title IV-D enforcement services in the court. The monthly report shall be transmitted to the Office of Court Administration of the Texas Judicial System no later than the 20th day of the month following the month reported, in such form as may be prescribed by the Office of Court Administration, which may include electronic data transfer. Copies of such reports shall be maintained in the office of the appropriate district or county clerk for a period of at least two years and shall be available to the public for inspection and reproduction.

(2) The council shall implement a monthly tracking system for civil cases involving injury or damage involving motor vehicle, other than motor vehicle, health care liability claims, premises liability, class actions, and products liability, to include medical devices and pharmaceuticals. As a duty of office, the district clerks and county clerks serving the affected courts shall report monthly such information as may be required by the council, including, at a minimum, the number of cases filed involving injury or damage involving motor vehicle, the number of cases filed involving injury or damage other than motor vehicle, the number of cases filed involving health care liability claims, the number of cases filed involving premises liability, the number of cases filed involving class actions, and the number of cases filed involving products liability. The monthly report shall be transmitted to the Office of Court Administration of the Texas Judicial System no later than the 20th day of the month following the month reported, in such form as may be prescribed by the Office of Court Administration, which may include electronic data transfer. Copies of such reports shall be maintained in the office of the appropriate district or county clerk for a period of at least two years and shall be available to the public for inspection and reproduction.

Amendment No. 126 was withdrawn.

Amendment No. 127

Representative Dunnam offered the following amendment to **CSHB 4**:

Floor Packet Page No. 327

Amend **CSHB 4**, ARTICLE 10 as follows:

On page 81, line 4-9, strike SECTION 10.25 in its entirety and renumber the subsequent SECTIONS appropriately.

Amendment No. 127 was adopted without objection.

Amendment No. 128

Representative Gallego offered the following amendment to **CSHB 4**:
Floor Packet Page No. 339

Amend **CSHB 4** by inserting an appropriately numbered section in Article 4590i to read as follows:

(a) Notwithstanding any other law, a health care provider is liable for all damages, without limitation, proximately caused by the performance of a medical procedure upon and unique to a female patient or a child that does not conform to the applicable standard of care.

Amendment No. 128 was withdrawn.

CSHB 4 - POINT OF ORDER

Representative Rodriguez raised a point of order against further consideration of **CSHB 4** under Rule 4, Section 40; Rule 11, Section 2; and Rule 11, Section 3 of the House Rules and Article III, Section 30 of the Texas Constitution on the grounds that the committee substitute is not germane to the introduced bill.

MEMORANDUM BY REPRESENTATIVE RODRIGUEZ

The committee substitute is not germane because it contains matter outside the scope of the original bill.

A committee may report an amendment in the nature of a complete substitute for a bill if that substitute is germane. H. Rule 4, § 40 (2003). Any amendment on a subject different from the subject under consideration is not germane. H. Rule 11 § 2.

The purpose of the germaneness rule is "prevent matters from being presented for consideration of the body which might not reasonably be anticipated." 58 H. J. Reg. 1733 (1963).

The committee substitute in SECTION 10.27 (page 82, line 2) repeals Section 242.0372, Health and Safety Code. That provision requires convalescent and nursing homes and related institutions ("nursing homes") to maintain liability insurance for health care liability claims as a condition of receiving and maintaining a license from the Texas Department of Health. Id. (emphasis added). Without a license from the department, a nursing home may not operate in Texas.

No section of **HB 4** as introduced dealt with repealing a licensing requirement for nursing homes. See Exh. A, Bill Comparison Utility Report on **HB 4** (Introduced) and **HB 4** (House Committee Substitute). [Although the bill addresses many aspects of the civil justice system and its effect on liability insurance rates, it does not address any aspects of physician or health care provider licensing. The major purpose of the amendment is to eliminate a licensing requirement for nursing homes. The purpose of the bill is to "address and correct problems that currently impair the fairness and efficiency of our court system." Bill Analysis, **HB 4**.]

The body of the bill determines germaneness. 48 H. J. Reg. 699 (1943). No portion of ARTICLE 10, which amends art. 4590i, Vernon's Texas Civil Statutes, deals with any licensing requirements for any health care provider, nor for that matter does the source law the article seeks to amend.

While it may be permissible to lower the rates for the required insurance, it is not permissible to repeal the requirement that the insurance be maintained as a condition of receiving a license to operate in Texas. This singular fact distinguishes this case from previous cases, where the substitute was merely different from the original bill. See 75 H. J. Reg. 1331 (1997). Nor is the repeal of licensing requirement incidental to the main proposition of civil procedure as it relates to making, proving, and trying of health care liability claims. See 45 H. J. Reg. 458 (1937).

Finally, to allow the bill to repeal a licensing requirement for health care liability claim insurance would be exactly opposite to the purpose of the bill, which is to apportion more carefully how that liability is determined. See 75 H. J. Reg. 3773 (1997); 52 H. J. Reg. 519 (1951).

For the foregoing reasons, the point of order should be sustained.

CSHB 4 - POINT OF ORDER DISPOSITION

The chair overruled the point of order, speaking as follows:

Mr. Rodriguez raises a point of order against further consideration of **CSHB 4** under Rule 11, Section 2; Rule 11, Section 3 and Article III, Section 30, Texas Constitution in that the substitute is not germane to the introduced bill. The chair has reviewed the introduced version of **HB 4** and finds that it contained a wide variety of civil practice and civil liability issues. Accordingly, **HB 4** as introduced is an "omnibus bill" to which almost any amendment relating to civil practice and civil liability issues is germane. The committee substitute contains six articles of material not found in the introduced bill, including provisions relating to medical malpractice, but all of the added material is within the broad subject of the introduced bill.

Accordingly, the point of order is respectfully overruled.

Amendment No. 129

Representative Gallego offered the following amendment to **CSHB 4**:
Floor Packet Page No. 339

Amend **CSHB 4** by inserting an appropriately numbered section in Article 4590i to read as follows:

(a) Notwithstanding any other law, a health care provider is liable for all damages, without limitation, proximately caused by the performance of a medical procedure upon and unique to a female patient or a child that does not conform to the applicable standard of care.

Amendment No. 130

Representative Gallego offered the following amendment to Amendment No. 129:

Amend the Gallego Amendment to **CSHB 4** on page 339 of the Amendment Packet by striking the language in the amendment and substituting the following:

Sec. 11.06. "Notwithstanding any other law, a health care provider is liable for all damages to a female patient or a child, without limitation, caused by the performance of an abortion that does not conform to the applicable standard of care. For purposes of this section, a child includes an unborn fetus."

**REMARKS BETWEEN REPRESENTATIVE HOWARD AND
REPRESENTATIVE GALLEGO**

REPRESENTATIVE HOWARD: Mr. Gallego, it says does not conform to the standard of care—normal standard of care. I don't have it right in front of me. Could you explain to me what that means?

REPRESENTATIVE GALLEGO: Mr. Howard, the amendment says, caused by the performance of an abortion that does not conform to the applicable standard of care.

HOWARD: Yes, what does that portion mean? Applicable standard of care, what does that mean?

GALLEGO: Every procedure—every medical procedure, Mr. Howard, must meet a certain standard of care. If it falls below that standard of care, it can be considered essentially medical negligence. And so in essence, what this does is this says in those situations where this procedure falls below that standard of care.

HOWARD: Who sets that standard? I guess that's where I'm having difficulty.

GALLEGO: Well, that standard of care is actually set—the way that it's handled, it's handled through expert testimony and physicians themselves set—determine what the standard of care is. It used to be in the old days, in the old law, that there was something called standard of care in the community. But as medicine has advanced so much, there is now one standard of care across the board for every community. That is essentially set through medical testimony.

HOWARD: You may recall—I believe it was two sessions ago Representative Hupp had a bill, or actually it was an amendment to a bill. It basically said that abortion providers had to meet a standard of care the same as an ancillary care unit. And I think that's in Chapter 243 of the Health Code. There is a standard for an ancillary care unit. It says—and that was basically what her amendment was. It says that if that provider—that abortion provider—does not, or basically what her amendment said was that they had to meet this standard of care. So, does your amendment mean, if an abortion provider is not meeting this standard of care, and there is a problem, then he would be liable for all damages?

GALLEGO: Absolutely. If the physician does not meet the standard of care, then he is not protected under **HB 4**, or should not be protected under **HB 4** by the terms of this amendment. What this amendment does is in that situation, the physician would be liable for actual or exempt—none of the limitations and none of the protections, the caps, and so forth. None of that would apply under this amendment.

REMARKS ORDERED PRINTED

Representative Howard moved to print remarks between Representative Howard and Representative Gallego.

The motion prevailed without objection.

Amendment No. 130 was adopted without objection.

REMARKS BETWEEN REPRESENTATIVE THOMPSON AND REPRESENTATIVE GALLEGO

REPRESENTATIVE THOMPSON: Mr. Gallego, if this bill—if this amendment goes on this bill, would it kill the bill?

REPRESENTATIVE GALLEGO: No ma'am.

THOMPSON: Would it make the bill unconstitutional?

GALLEGO: No ma'am.

THOMPSON: If it did make the bill unconstitutional, would it be able to be stripped out?

GALLEGO: Yes ma'am.

THOMPSON: There is a separability clause to this bill, isn't there?

GALLEGO: Yes ma'am.

THOMPSON: And that means that this amendment actually went on, and if this is a problem constitutionally, this section would be stripped out, but the whole bill would survive.

GALLEGO: Yes ma'am.

THOMPSON: Less this amendment?

GALLEGO: Yes ma'am.

THOMPSON: And what you're saying is?

GALLEGO: The other point I would make, Representative Thompson, is that in the event that there's a problem with this particular provision of the bill that is discovered before the senate passes it, then I would expect that there will be a conference committee between the house and the senate on **HB 4**. I really doubt that the senate will take our version with no amendments, and, therefore, it can always be amended or changed during the conference process during the conference committee.

REMARKS ORDERED PRINTED

Representative Thompson moved to print remarks between Representative Thompson and Representative Gallego.

The motion prevailed without objection.

Representative Nixon moved to table Amendment No. 129.

A record vote was requested.

The motion to table prevailed by (Record 130): 80 Yeas, 63 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flores; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Hamilton; Hardcastle; Harper-Brown; Heflin; Hegar; Hill; Hope; Hughes; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farabee; Farrar; Gallego; Garza; Giddings; Goodman; Guillen; Gutierrez; Haggerty; Hartnett; Hilderbran; Hochberg; Hodge; Homer; Hopson; Howard; Jones, D.; Jones, J.; Laney; Lewis; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Smithee; Solis; Swinford; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

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

Absent, Excused — Oliveira; Wise.

Absent — Coleman; Luna.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 130. I intended to vote no.

Christian

I was shown voting yes on Record No. 130. I intended to vote no.

Hughes

I was shown voting yes on Record No. 130. I intended to vote no.

Seaman

I was shown voting yes on Record No. 130. I intended to vote no.

Hughes

Amendment No. 131

Representative Dunnam offered the following amendment to **CSHB 4**:
Floor Packet Page No. 341

Amend **CSHB 4**, ARTICLE 10, by inserting a new appropriately numbered Section of Article 4590i, Vernon's Texas Civil Statutes, to read as follows:

Sec. _____ . REFERRAL OF REGULATORY AGENCY. If a claimant provides credible evidence that a health care provider who is a defendant in an action to which this article applies has committed repeated negligent acts or omissions and the trier of fact determines that the health care provider is a danger to the public, the court shall refer the health care provider to the appropriate regulatory agency.

Amendment No. 132

Representative Dunnam offered the following amendment to Amendment No. 131:

Substitute the following for the Dunnam amendment:

Amend **CSHB 4**, ARTICLE 10, by inserting a new appropriately numbered Section of Article 4590i, Vernon's Texas Civil Statutes, to read as follows:

Sec. 12.03. REFERRAL OF REGULATORY AGENCY. If a claimant provides credible evidence that a health care provider who is a defendant in an action to which this article applies has committed repeated negligent acts or omissions and the trier of fact determines that the health care provider is a danger to the public, the court shall refer the health care provider to the appropriate regulatory agency.

Amendment No. 132 was adopted without objection.

Representative Nixon moved to table Amendment No. 131.

A record vote was requested.

The motion to table prevailed by (Record 131): 90 Yeas, 51 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hardcastle; Harper-Brown; Heflin; Hegar; Hilderbran; Hill; Hope; Hopson; Howard; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Guillen; Gutierrez; Hartnett; Hochberg; Hodge; Homer; Hughes; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Solomons; Talton; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

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

Absent, Excused — Oliveira; Wise.

Absent — Giddings; Jones, J.; Moreno, P.; Telford.

Amendment No. 133

Representative Rose offered the following amendment to **CSHB 4**:
Floor Packet Page No. 342

Amend **CSHB 4**, (House Committee Report, 1st Printing) on page 90, between lines 7 and 8, by inserting the following new Section 11.02 and renumbering the subsequent sections of the article accordingly:

SECTION 11.02. Chapter 261, Health and Safety Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. LIABILITY OF NONPROFIT MANAGEMENT
CONTRACTOR

Sec. 261.051. DEFINITION. In this subchapter, "municipal hospital management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services under contract with a municipality.

Sec. 261.052. LIABILITY OF MUNICIPAL HOSPITAL MANAGEMENT CONTRACTOR. A municipal hospital management contractor and any employee of the contractor are, while performing services under the contract for the benefit of the hospital, employees of the municipality for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

Amendment No. 133 was adopted without objection.

Amendment No. 134

Representative Dunnam offered the following amendment to **CSHB 4**:

Floor Packet Page No. 344

Amend **CSHB 4** as follows:

On page 91, lines 11-12, strike "for personal injury or death"

Amendment No. 134 was withdrawn.

Amendment No. 135

On behalf of Representative Y. Davis, Representative Dutton offered the following amendment to **CSHB 4**:

Floor Packet Page No. 346

Amend **CSHB 4** as follows:

On Page 91, between lines 16 and 17 by inserting a new subsection (c) to read as follows:

(c) The composition of a jury in an action shall reflect the ethnic diversity of the county in which the action is filed.

Representative Nixon moved to table Amendment No. 135.

The motion to table was withdrawn.

Amendment No. 136

Representative Y. Davis offered the following amendment to Amendment No. 135:

Substitute to Y. Davis Amendment No. 135:

Amend **CSHB 4** as follows:

On Page 91, between lines 16 and 17 by inserting a new subsection (c) to read as follows:

(c) The composition of a jury in an action shall reasonably reflect the ethnic diversity of the county in which the action is filed.

Amendment No. 136 was adopted without objection.

Representative Nixon moved to table Amendment No. 135.

A record vote was requested.

The motion to table prevailed by (Record 132): 89 Yeas, 54 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Mercer; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Thompson; Truitt; Turner; Uresti; Villarreal; Wilson.

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

Absent, Excused — Oliveira; Wise.

Absent — Telford; Wolens.

Amendment No. 137

Representative Dunnam offered the following amendment to **CSHB 4**:
Floor Packet Page No. 605

Amend **CSHB 4** as follows:

On page 91, line 11, strike Subsection (b) and replace it with a new Subsection (b) to read as follows:

(b)(1) In an action seeking damages for personal injury or death, a person's answer in voir dire that the person could not award a certain sum of money damages based on a hypothetical set of circumstances does not, in and of itself, establish a bias or prejudice in favor of or against, a party in the action that warrants disqualification under Section (a)(4).

(2) In this section, "side" has the same meaning as in Rule 233, Texas Rules of Civil Procedure, or its successor.

(A) In any civil action to be tried before a jury, the trial court shall allow each side voir dire, as follows:

(1) in Level 1 cases, as defined by Rule 190.2, Texas Rules of Civil Procedure, at least one hour;

(2) in Level 2 cases, as defined by Rule 190.3, Texas Rules of Civil Procedure, at least two hours; and

(3) in Level 3 cases, as defined by Rule 190.4, Texas Rules of Civil Procedure, at least three hours.

(B) The time allocated in Subsection (b) shall not include time consumed in making preemptory challenges or challenges for cause to jurors or in making or responding to objections.

(C) The supreme court may adopt rules consistent with the provisions of this section. To the extent that any rule conflicts with the provisions of this section, this section controls.

(D) Section 22.004, Government Code, does not apply to this section.

Amendment No. 137 was withdrawn.

Amendment No. 138

Representative Dunnam offered the following amendment to **CSHB 4**:
Floor Packet Page No. 605

Amend **CSHB 4** as follows:

On page 91, line 11, strike Subsection (b) and replace it with a new Subsection (b) to read as follows:

(b)(1) In an action seeking damages for personal injury or death, a person's answer in voir dire that the person could not award a certain sum of money damages based on a hypothetical set of circumstances does not, in and of itself, establish a bias or prejudice in favor of or against, a party in the action that warrants disqualification under Section (a)(4).

(2) In this section, "side" has the same meaning as in Rule 233, Texas Rules of Civil Procedure, or its successor.

(A) In any civil action to be tried before a jury, the trial court shall allow each side voir dire, as follows:

(1) in Level 1 cases, as defined by Rule 190.2, Texas Rules of Civil Procedure, at least one hour;

(2) in Level 2 cases, as defined by Rule 190.3, Texas Rules of Civil Procedure, at least two hours; and

(3) in Level 3 cases, as defined by Rule 190.4, Texas Rules of Civil Procedure, at least three hours.

(B) The time allocated in Subsection (b) shall not include time consumed in making preemptory challenges or challenges for cause to jurors or in making or responding to objections.

(C) The supreme court may adopt rules consistent with the provisions of this section. To the extent that any rule conflicts with the provisions of this section, this section controls.

Amendment No. 138 was adopted without objection.

Amendment No. 139

Representative Castro offered the following amendment to **CSHB 4**:
Floor Packet Page No. 356

Amend **CSHB 4** as follows:

On page 92, after line 18, insert a new Subsection (c)(1) to read as follows and renumber accordingly:

(c)(1) Subsection (b) does not apply to an action in which the claimant was less than 18 years of age at the time of the injury that is the basis of the action.

Representative Nixon moved to table Amendment No. 139.

The motion to table prevailed.

Amendment No. 140

Representatives Deshotel, Thompson, and Solis offered the following amendment to **CSHB 4**:

Floor Packet Page No. 371

Amend **CSHB 4** as follows:

On page 93, line 26, delete Article 14 in its entirety.

Representative Nixon moved to table Amendment No. 140.

The motion to table prevailed.

Amendment No. 141

Representative Solis offered the following amendment to **CSHB 4**:
Floor Packet Page No. 608

Amend **CSHB 4** as follows:

On page 94, line 7-10, strike section (b) and insert a new section to read as follows:

Section 74.0241(b)

Notwithstanding any other law or rule, and on motion of a party to a health care liability claim, the supreme court shall assign a judge for the health care liability claim and any action or suit that includes the claim. A motion to assign a judge must be made:

(1) by a party asserting a claim not later than 10 days following the appearance of any defendant; or

(2) by a party against whom the claim is asserted concurrently with or before the filing of the movant's answer.

Amendment No. 141 was withdrawn.

Amendment No. 142

Representatives Deshotel, Thompson, and Solis offered the following amendment to **CSHB 4**:

Floor Packet Page No. 369

Amend **CSHB 4** as follows:

On page 94, line 10, at the end of the sentence, add:

"Any judge assigned under this section may not have been defeated in the general election immediately preceding the assignment under this section."

Amendment No. 142 was adopted without objection.

Amendment No. 143

On behalf of Representatives Deshotel, Thompson, and Solis, Representative Nixon offered the following amendment to **CSHB 4**:

Floor Packet Page No. 370

Amend **CSHB 4** as follows:

On page 94, line 10, at the end of the sentence, add:

"Any judge assigned under this section may not have retired before the end of the applicable election term immediately preceding the assignment under this section."

Amendment No. 143 was adopted without objection.

Amendment No. 144

Representative Solis offered the following amendment to **CSHB 4**:

Floor Packet Page No. 608

Amend **CSHB 4** as follows:

On page 94, line 7-10, strike section (b) and insert a new section to read as follows:

Section 74.0241(b)

Notwithstanding any other law or rule, and on motion of a party to a health care liability claim, the supreme court shall assign a judge for the health care liability claim and any action or suit that includes the claim. A motion to assign a judge must be made:

(1) by a party asserting a claim not later than 10 days following the appearance of any defendant; or

(2) by a party against whom the claim is asserted concurrently with or before the filing of the movant's answer.

Amendment No. 145

Representative Solis offered the following amendment to Amendment No. 144:

Amend Amendment No. 144 by Solis to **CSHB 4** (on page 608, amendment packet) by striking "10 days" and substituting "30 days".

Amendment No. 145 was adopted without objection.

Amendment No. 144, as amended, was adopted without objection.

Amendment No. 146

Representatives Deshotel, Thompson, and Solis offered the following amendment to **CSHB 4**:

Floor Packet Page No. 368

Amend **CSHB 4** as follows:

On page 94, line 10, at the end of the sentence, add:

"Any judge assigned under this section may not be the subject of a grievance or disciplinary proceeding at the Commission of Judicial Conduct or by the State Bar of Texas."

Representative Baxter moved to table Amendment No. 146.

The motion to table prevailed.

Amendment No. 147

On behalf of Representative Dunnam, Representative Mabry offered the following amendment to **CSHB 4**:

Floor Packet Page No. 605

Amend **CSHB 4** as follows:

On page 91, line 11, strike Subsection (b) and replace it with a new Subsection (b) to read as follows:

(b)(1) In an action seeking damages for personal injury or death, a person's answer in voir dire that the person could not award a certain sum of money damages based on a hypothetical set of circumstances does not, in and of itself, establish a bias or prejudice in favor of or against a party in the action that warrants disqualification under Section (a)(4).

(2) In this section, "side" has the same meaning as in Rule 233, Texas Rules of Civil Procedure, or its successor.

(A) In any civil action to be tried before a jury, the trial court shall allow each side voir dire, as follows:

(1) in Level 1 cases, as defined by Rule 190.2, Texas Rules of Civil Procedure, at least one hour;

(2) in Level 2 cases, as defined by Rule 190.3, Texas Rules of Civil Procedure, at least two hours; and

(3) in Level 3 cases, as defined by Rule 190.4, Texas Rules of Civil Procedure, at least three hours.

(B) The time allocated in Subsection (b) shall not include time consumed in making preemptory challenges or challenges for cause to jurors or in making or responding to objections.

(C) The supreme court may adopt rules consistent with the provisions of this section. To the extent that any rule conflicts with the provisions of this section, this section controls.

(D) Section 22.004, Government Code, does not apply to this section.

Amendment No. 148

Representative Mabry offered the following amendment to Amendment No. 147:

Substitute the following for Amendment No. 147 by Dunnam to **CSHB 4** (beginning on page 605, amendment packet):

Amend **CSHB 4** as follows:

- (1) On page 90, line 24, strike "(a)".
- (2) On page 91, strike lines 11-16.

Amendment No. 148 was withdrawn.

Amendment No. 147 was withdrawn.

Amendment No. 149

Representative Thompson offered the following amendment to **CSHB 4**:

Floor Packet Page No. 529

Amend **CSHB 4** as follows:

On page 23, line 5, strike Sec. 74.161 subsection (a) and substitute:

(a) The judicial panel on multidistrict litigation consists of the presiding judge from each administrative judicial region.

Representative Nixon moved to table Amendment No. 149.

The motion to table prevailed.

Amendment No. 150

Representatives Bonnen and Capelo offered the following amendment to **CSHB 4**:

Floor Packet Page No. 620

Amend **CSHB 4** by adding the following appropriately numbered ARTICLE to the bill and renumbering the ARTICLES of the bill accordingly:

ARTICLE ____ . LIABILITY OF VOLUNTEER FIRE DEPARTMENTS
AND VOLUNTEER FIRE FIGHTERS

SECTION ____ .01. FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) 80 percent of the area of this state is currently protected by volunteer fire departments;

(2) concern regarding personal liability arising out of services rendered by volunteer fire fighters on behalf of volunteer fire departments deters individuals from offering their services as volunteer fire fighters;

(3) the diminishing number of volunteer fire fighters leads to increased costs and less service to areas of this state that are served by volunteer fire departments; and

(4) it is in the public interest of the citizens of this state to encourage the continued level of service provided by volunteer fire departments.

(b) The purpose of this article is to reduce the exposure to liability of:

(1) a volunteer fire department while involved in or providing an emergency response; and

(2) a volunteer fire fighter while acting as a member of a volunteer fire department.

SECTION ____ .02. AMENDMENT. Chapter 78, Civil Practice and Remedies Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. FIRE-FIGHTING SERVICES

Sec. 78.101. DEFINITIONS. In this subchapter:

(1) "Emergency response" means a response involving fire protection or prevention, rescue, emergency medical, or hazardous material response services.

(2) "Volunteer fire department" means a nonprofit organization that is:

(A) operated by its members;

(B) exempt from the state sales tax under Section 151.310, Tax Code, or the state franchise tax under Section 171.083, Tax Code; and

(C) organized to provide an emergency response.

(3) "Volunteer fire fighter" means a member of a volunteer fire department.

Sec. 78.102. APPLICABILITY OF SUBCHAPTER: EMERGENCY RESPONSE. This subchapter applies only to damages for personal injury, death, or property damage, other than property damage to which Subchapter A applies, arising from an error or omission of:

(1) a volunteer fire department while involved in or providing an emergency response; or

(2) a volunteer fire fighter while involved in or providing an emergency response as a member of a volunteer fire department.

Sec. 78.103. LIABILITY OF VOLUNTEER FIRE DEPARTMENT. A volunteer fire department is:

(1) liable for damages described by Section 78.102 only to the extent that a county providing the same or similar services would be liable under Chapter 101; and

(2) entitled to the exclusions, exceptions, and defenses applicable to a county under Chapter 101 and other statutory or common law.

Sec. 78.104. LIABILITY OF VOLUNTEER FIRE FIGHTER. A volunteer fire fighter is:

(1) liable for damages described by Section 78.102 only to the extent that an employee providing the same or similar services for a county would be liable; and

(2) entitled to the exclusions, exceptions, immunities, and defenses applicable to an employee of a county under Chapter 101 and other statutory or common law.

SECTION ____ .03. TRANSITION. Subchapter C, Chapter 78, Civil Practice and Remedies Code, as added by this article, applies only to a cause of action that accrues on or after the effective date of this article. An action that accrues before the effective date of this article is governed by the law applicable to the action immediately before the effective date of this article, and that law is continued in effect for that purpose.

Amendment No. 150 was adopted without objection.

Amendment No. 151

On behalf of Representative Y. Davis, Representative Thompson offered the following amendment to **CSHB 4**:

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Amend **CSHB 4** by adding the following appropriately numbered ARTICLES and renumbering existing ARTICLES and SECTIONS of the bill appropriately:

ARTICLE ____ . PROMPT PAYMENT OF PHYSICIANS AND HEALTH CARE PROVIDERS

SECTION ____.01. Sections 3A(c) and (e), Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, are amended to read as follows:

(c) Not later than the 30th [~~45th~~] day after the date that the insurer receives a clean claim from a preferred provider, the insurer shall:

(1) pay the total amount of the claim in accordance with the contract between the preferred provider and the insurer;

(2) pay the portion of the claim that is not in dispute and notify the preferred provider in writing why the remaining portion of the claim will not be paid; or

(3) notify the preferred provider in writing why the claim will not be paid.

(e) If the insurer acknowledges coverage of an insured under the health insurance policy but intends to audit the preferred provider claim, the insurer shall pay the charges submitted at 85 percent of the contracted rate on the claim not later than the 30th [~~45th~~] day after the date that the insurer receives the claim from the preferred provider. Following completion of the audit, any additional payment due a preferred provider or any refund due the insurer shall be made not later than the 30th day after the later of the date that:

(1) the preferred provider receives notice of the audit results; or

(2) any appeal rights of the insured are exhausted.

SECTION ____.02. Sections 843.338, 843.340, and 843.346, Insurance Code, as effective June 1, 2003, are amended to read as follows:

Sec. 843.338. DEADLINE FOR ACTION ON CLEAN CLAIMS. Not later than the 30th [~~45th~~] day after the date on which a health maintenance organization receives a clean claim from a physician or provider, the health maintenance organization shall:

(1) pay the total amount of the claim in accordance with the contract between the physician or provider and the health maintenance organization;

(2) pay the portion of the claim that is not in dispute and notify the physician or provider in writing why the remaining portion of the claim will not be paid; or

(3) notify the physician or provider in writing why the claim will not be paid.

Sec. 843.340. AUDITED CLAIMS. A health maintenance organization that acknowledges coverage of an enrollee under a health care plan but intends to audit a claim submitted by a physician or provider shall pay the charges submitted at 85 percent of the contracted rate on the claim not later than the 30th [~~45th~~] day after the date on which the health maintenance organization receives the claim from a physician or provider. Following completion of the audit, any

additional payment due a physician or provider or any refund due the health maintenance organization shall be made not later than the 30th day after the later of the date that:

- (1) the physician or provider receives notice of the audit results; or
- (2) any appeal rights of the enrollee are exhausted.

Sec. 843.346. PAYMENT OF CLAIMS. Subject to Sections 843.336-843.345, a health maintenance organization shall pay a physician or provider for health care services and benefits provided to an enrollee under the evidence of coverage and to which the enrollee is entitled under the terms of the evidence of coverage not later than:

- (1) the 30th ~~[45th]~~ day after the date on which a claim for payment is received with the documentation reasonably necessary to process the claim; or
- (2) if applicable, within the number of calendar days specified by written agreement between the physician or provider and the health maintenance organization.

SECTION __.03. This article applies only to a claim for payment made under a benefit plan or evidence of coverage delivered, issued for delivery, or renewed on or after September 1, 2003. A benefit plan or evidence of coverage delivered, issued for delivery, or renewed before September 1, 2003, is governed by the law in effect immediately before that date and that law is continued in effect for this purpose.

ARTICLE __. PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS

SECTION __.01. Article 5.15-1, Insurance Code, is amended by adding Section 12 to read as follows:

Sec. 12. RATE ROLLBACK. (a) Except as provided by Subsection (b) of this section, this section applies only to an insurer writing professional liability insurance for physicians and health care providers in this state on August 31, 2003, or a person classified as an affiliate of one of those insurers under Section 823.003 of this code.

(b) A person that is classified as an affiliate of an insurer under Section 823.003 of this code and that begins writing professional liability insurance for physicians and health care providers on or after September 1, 2003, may not charge an amount for professional liability insurance for physicians and health care providers issued or renewed in this state that exceeds the amount that the company described by Subsection (a) of this section with which the person is affiliated may charge for the insurance under this section.

(c) An insurer may not charge an insured for professional liability insurance for physicians and health care providers issued or renewed on or after September 1, 2003, an amount that exceeds 85 percent of the amount the insurer charged that insured for the same coverage immediately before September 1, 2003, or, if the insurer did not insure that insured immediately before that date, the amount that the insurer would have charged the insured at that time.

Amendment No. 152

Representative Thompson offered the following amendment to Amendment No. 151:

Amend the Davis amendment on p. 151 to read as follows:

Amend **CSHB 4** by adding the following appropriately numbered ARTICLES and renumbering existing ARTICLES and SECTIONS of the bill appropriately:

ARTICLE ____ . PROMPT PAYMENT OF PHYSICIANS AND HEALTH CARE PROVIDERS

SECTION ____.01. Sections 3A(c) and (e), Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, are amended to read as follows:

(c) Not later than the 30th [~~45th~~] day after the date that the insurer receives a clean claim from a preferred provider, the insurer shall:

(1) pay the total amount of the claim in accordance with the contract between the preferred provider and the insurer;

(2) pay the portion of the claim that is not in dispute and notify the preferred provider in writing why the remaining portion of the claim will not be paid; or

(3) notify the preferred provider in writing why the claim will not be paid.

(e) If the insurer acknowledges coverage of an insured under the health insurance policy but intends to audit the preferred provider claim, the insurer shall pay the charges submitted at 85 percent of the contracted rate on the claim not later than the 30th [~~45th~~] day after the date that the insurer receives the claim from the preferred provider. Following completion of the audit, any additional payment due a preferred provider or any refund due the insurer shall be made not later than the 30th day after the later of the date that:

(1) the preferred provider receives notice of the audit results; or

(2) any appeal rights of the insured are exhausted.

SECTION ____.02. Sections 843.338, 843.340, and 843.346, Insurance Code, as effective June 1, 2003, are amended to read as follows:

Sec. 843.338. DEADLINE FOR ACTION ON CLEAN CLAIMS. Not later than the 30th [~~45th~~] day after the date on which a health maintenance organization receives a clean claim from a physician or provider, the health maintenance organization shall:

(1) pay the total amount of the claim in accordance with the contract between the physician or provider and the health maintenance organization;

(2) pay the portion of the claim that is not in dispute and notify the physician or provider in writing why the remaining portion of the claim will not be paid; or

(3) notify the physician or provider in writing why the claim will not be paid.

Sec. 843.340. AUDITED CLAIMS. A health maintenance organization that acknowledges coverage of an enrollee under a health care plan but intends to audit a claim submitted by a physician or provider shall pay the charges submitted at 85 percent of the contracted rate on the claim not later than the 30th [~~45th~~] day after the date on which the health maintenance organization receives the claim from a physician or provider. Following completion of the audit, any

additional payment due a physician or provider or any refund due the health maintenance organization shall be made not later than the 30th day after the later of the date that:

- (1) the physician or provider receives notice of the audit results; or
- (2) any appeal rights of the enrollee are exhausted.

Sec. 843.346. PAYMENT OF CLAIMS. Subject to Sections 843.336-843.345, a health maintenance organization shall pay a physician or provider for health care services and benefits provided to an enrollee under the evidence of coverage and to which the enrollee is entitled under the terms of the evidence of coverage not later than:

- (1) the 30th [~~45th~~] day after the date on which a claim for payment is received with the documentation reasonably necessary to process the claim; or
- (2) if applicable, within the number of calendar days specified by written agreement between the physician or provider and the health maintenance organization.

SECTION __.03. This article applies only to a claim for payment made under a benefit plan or evidence of coverage delivered, issued for delivery, or renewed on or after September 1, 2003. A benefit plan or evidence of coverage delivered, issued for delivery, or renewed before September 1, 2003, is governed by the law in effect immediately before that date and that law is continued in effect for this purpose.

Amendment No. 152 was adopted without objection.

Representative Nixon moved to table Amendment No. 151.

A record vote was requested.

The motion to table prevailed by (Record 133): 80 Yeas, 65 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Morrison; Mowery; Nixon; Paxton; Phillips; Reyna; Riddle; Seaman; Smith, T.; Smithee; Solomons; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Goodman; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Kuempel; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Miller; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Pitts; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Smith, W.; Solis; Stick; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wolens.

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

Absent, Excused — Oliveira; Wise.

Amendment No. 153

Representative Merritt offered the following amendment to **CSHB 4**:
Floor Packet Page No. 434

Amend **CSHB 4** by inserting a new ARTICLE to read as follows and appropriately renumbering subsequent ARTICLES:

ARTICLE _____. CERTAIN PROVISIONS IN CONTRACTS

SECTION _____.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 145 to read as follows:

CHAPTER 145. CERTAIN PROVISIONS IN CONTRACTS

Sec. 145.001. APPLICABILITY. This chapter applies to a contract.

Sec. 145.002. AGREEMENT VOID AND UNENFORCEABLE. A provision, promise, understanding, or covenant contained in, collateral to, or affecting a contract is void and unenforceable to the extent that it provides or purports to provide to the indemnitee defense or indemnity, or both, against loss or liability that:

(1) is caused by or results from the sole or concurrent negligence, including strict liability, of the indemnitee, an agent or employee of the indemnitee, or an independent contractor directly responsible to the indemnitee; and

(2) arises or results from:

(A) death or bodily injury to a person;

(B) damage to property;

(C) a fine, penalty, administrative action, or other action by a governmental entity; or

(D) any other loss, damage, or expense that arises from an occurrence described by Paragraph (A), (B), or (C).

Sec. 145.003. WAIVER PROHIBITED. The provisions of this chapter may not be waived by contract or otherwise.

Sec. 145.004. APPLICABILITY OF OTHER LAW. This chapter prevails over any other law that conflicts with or is inconsistent with this chapter.

SECTION _____.02. (a) This article applies to:

(1) a contract entered into or renewed on or after the effective date of this article; and

(2) any specific, terminable performance of a specific job or activity begun under a contract after the effective date of this article regardless of whether the contract was entered into or renewed before the effective date of this article.

(b) A contract entered into or renewed before the effective date of this article and any job or activity under the contract begun before the effective date of this article is governed by the law in effect immediately before the effective date of this article, and that law is continued in effect for that purpose.

Amendment No. 154

Representative Solomons offered the following amendment to Amendment No. 153:

Amend the Merritt amendment to **CSHB 4** by striking Chapter 145, Civil Practice and Remedies Code, as added by the amendment (page 1, lines 6-29 of the amendment) and substituting the following:

CHAPTER 145. CERTAIN PROVISIONS IN CONSTRUCTION CONTRACTS

Sec. 145.001. DEFINITION. In this chapter, "construction contract" means a contract or agreement made and entered into by a contractor, construction manager, subcontractor, supplier, or equipment lessor, concerning construction, alteration, or repair.

Sec. 145.002. AGREEMENT VOID AND UNENFORCEABLE. (a) Except as proved by Subsection (b), a covenant, promise, or agreement contained in a construction contract, or in an agreement collateral to or affecting a construction contract, is void and unenforceable to the extent that it indemnifies a person against all or any portion of loss or liability for damage that:

(1) is caused by or results from the sole, joint, or concurrent negligence of the indemnitee, its agent, employee, or another independent contractor directly responsible to the indemnitee; and

(2) arises from:

(A) personal injury or death;

(B) property damage;

(C) a fine, penalty, administrative action, or other action assessed by a governmental entity directly against the indemnitee, its agent or employee, or an independent contractor directly responsible to the indemnitee; or

(D) any other loss, damage, or expense that arises from an occurrence described by Paragraphs (A), (B), or (C).

(b) A covenant, promise, or agreement contained in a construction contract, or in an agreement collateral to or affecting a construction contract, may provide for a person to indemnify, hold harmless, or defend another person against loss or liability for damage that is caused by or results from the sole, joint, or concurrent negligence of the indemnitee or its agent or employee and arises from the bodily injury or death of an employee of:

(1) the indemnitor;

(2) the indemnitor's subcontractor, supplier, or equipment lessor;

(3) any lower-tier subcontractor, supplier, or equipment lessor of the indemnitor's subcontractor; or

(4) any independent contractor directly responsible to a person described in Subdivisions (1)-(3).

Sec. 145.003. CERTAIN LAWS AND CONTRACTS UNAFFECTED. (a) This chapter does not affect the validity and enforceability of:

(1) an insurance contract;

(2) benefits and protections under the workers' compensation laws of this state; or

(3) any statutory right of contribution.

(b) This chapter does not affect a contract covered by (Section 2252.902, Government Code.) Government Buildings (GSA) Indemnity provisions in construction contracts

Sec. 145.004. WAIVER PROHIBITED. This chapter may not be waived by contract or otherwise.

Amendment No. 154 was adopted without objection.

Amendment No. 153, as amended, was adopted without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Licensing and Administrative Procedures, will not meet upon adjournment today. Today's meeting will be postponed until 8 a.m, Thursday, April 3, E2.012.

(Speaker in the chair)

CSHB 4 - (consideration continued)

REMARKS BY REPRESENTATIVE EILAND

Mr. Speaker, I know we've been here several days on this bill and we've talked about it a lot, but I just want to—couldn't just let it go without saying goodbye. Remember everything that this bill does—it deals with class actions, it deals with proportionate responsibility, it deals with employers submission to the jury, it deals with medical malpractice, it deals with just about every piece of civil litigation that's going to happen in this state from now on. Also, importantly, I want to remind that the rollbacks that we've put in here for the insurance—that be careful when you say that there's going to be a 15 percent rate reduction because there's many things that would prevent that. And with that, Mr. Speaker, I would urge you to vote against the bill. It's overreaching. It goes too far. It's not balanced. But we do thank you for taking the time—I guess it's been five or six days now if not more. But I think that it was important to have a fair debate on this bill so that everybody knows the—everything that is in this bill. And I think that you now know everything that is in this bill. So, I appreciate your attention that you gave us. I apologize for the time that it took, but it is an important bill and it does touch many aspects of people's right to the courthouse and what happens to them once they get there. Thank you.

REMARKS BY REPRESENTATIVE DUNNAM

Thank you, members. Please tolerate me for just a minute. It would be an injustice to have sat through this and have not discussed the bill at the end. I know we're all tired. We've been sometimes sarcastic, and sometimes emotional, and in my earnest I've even prompted my friend, David Swinford, to get angry. But I think that there are things that stay. In 1917, my grandfather sat in this chamber. Many of y'all don't know that. And he told me—he died when I was about 9—and he told me some stories about that. They had these desks here. Those were their offices. They did not have computers. They had a secretarial pool, evidently on the side somewhere and these were—some of these rooms were boxed up for smoking rooms and things like that. Some things have

changed, some haven't. There was a pretty strong lobby then. He told me about that. And he served one term because he wanted to be a father, and he wanted to be a husband, and those were his priorities.

Justice is the most fundamental goal of a free society. And open courts, which have been guaranteed by our Texas Constitution and our Texas Bill of Rights, have been there since the founding of the state. They're not just part of this free society. They're the bedrock of a free society. Collective wisdom of 12 individuals—12 separate minds. It's one of the greatest institutions in the modern world. It's been around for a long time. We've heard a few laughs. Kill all the lawyers. We see that a lot. Y'all know what that really means? If you've read Shakespeare, kill all the lawyers was said by Dick the butcher. He wanted to take over the government and Dick the butcher said that the first thing you must do if you are going to take over the government is you must kill all the lawyers, because they are the ones that stand up for the individual rights of people.

Another way it was said the object of any tyrant would be to overthrow and diminish trial by jury, for no tyrant could afford to leave a subject's freedom in the hands of 12 of his countrymen. So that a trial by jury is more than an instrument of justice, and more than one wheel of the constitution. It is the lamp that shows that freedom lives. A jury of 12 people is the great equalizer in our society where an average shop keeper can demand justice from the most powerful in our now commercial world. Where the mechanic can stand equally with Donald Trump and where, still today, Will Cain stands a chance against the Miller boys. This bill does not say that we cannot trust our juries because we can. This bill is in place because people of power fear our juries. And the justice that only a jury can provide—Corporate U.S.A. and Corporate Texas demands a stacked deck of justice. And what we have compromised to create this preferred class of citizens, I don't know.

I can tell my grandkids that I stood on the floor of the house when they attempted to destroy every man's right to a fair trial and fair compensation. I can say that I stood on the floor of the house when a child labor shop in Thailand was given special protection by the house at the expense of Texas children. That's not something I want to tell my grandkids. How many of my friends, and I have lots of friends here—that's one of the things that I learned most these last seven days because I've done some things that made a lot of people mad, but I've got a lot of Republican friends that looked at me and said that I'm glad you're standing up and doing that. I wish I could do it too. And I hope Bill Ratliff fixes this thing when we get over there. The weak should not abdicate our responsibilities and hope that Senator Ratliff will save us from ourselves. Mr. Nixon tells us that this bill is about how we live with others. And I find that hard to believe. You don't shut the door on your neighbor's face when they need help, when they seek to right wrongs, when they have lost loved ones and they want answers. Neighbors help neighbors. They extend a helping hand and compassion—a word we hear a lot in politics today. And aid, and we haven't done that in this bill.

Mr. Wilson said that this is a battle between the haves and the haves. It is not. This is a battle between the haves, the insurance industry, and the large corporations versus us, doctors, small businesses, friends, families, and

neighbors. This bill will do nothing about the medical malpractice insurance crisis. This crisis was created by a state board that didn't discipline the five percent of doctors that commit 50 percent of the wrongs. It was created—the crisis was created by insurance companies that invested heavily in the stock market and lost their bet. It was not created by the woman whose doctor removed both of her breasts wrongly. It was not created by the father driving the car with Firestone tires. I do believe that one day I think this bill will pass. But one day, after Texans live under this bill and learn the enormity of what has been done to them in this piece of paper, done to them in their name. They'll rise up that day and come again to reestablish justice in Texas. I just hope that day is sooner than later. Thank you.

REMARKS BY REPRESENTATIVE Y. DAVIS

Thank you. Mr. Speaker, members, I just want to take a few minutes 'cause I think it is very important that as a member of the Civil Practices Committee that I talk just a little bit about where I think we went wrong on this, and how we ought to be changing our method in this house.

As a member of Civil Practices, I'm not an attorney, and my charge is to look after District 111. But I've got to do it in a way that it takes care of all the prospects of the State of Texas. And we had an opportunity as a committee to do the right thing and honor our process—to put integrity in front of breaking this process down. We didn't do it. In fact, we found out that there was a second meeting that went on. And I'm sure I wasn't invited to that meeting as a member of Civil Practices because I probably had a different perspective. But what troubles me is that we've now come to a place where we're going to have secret meetings and leave all the perspectives aside. And I gotta tell you, that's very offensive to me.

When I came to the Texas Legislature, I came with a thought that all of us would have an opportunity to present perspectives so that at the end of the day we would come up with what would be best for all of Texas. I never imagined that we would be talking in 2003 about having meetings that excluded members of the committee. And while I understand the work sessions are important, what troubles me is why we would think working without all the members would be best for Texas. And so as a member of Civil Practices I'm offended that now we've got a fight on the floor to ask you to do the right thing. And most offensive is that we don't even think enough to do the right thing.

How many of you in this house today during this debate have asked yourselves what's right? What's fair? And where's the balance? And if you didn't ask yourself those questions, when are you going to ask, what's right for my district? What's right for my constituents? What's right for Texas? And I gotta tell you that as we vote on this bill, you all ought to be shaking because you know you didn't ask yourself this. If you looked around—and I know we all did—you weren't even looking at the amendments. You didn't even hear the debate. Well, we can pass bills that tell you that we don't have to protect our poor, our elderly, our youth. When we don't care enough to know what the impact would be to the entire State of Texas, something is wrong with this

legislative process. And I rise in opposition to a piece of legislation that would be this unbalanced, this unfair, and something that everyone would ignore asking themselves what's right?

And I leave this with you—we are responsible for the world we live in. We are responsible for that world. And if you care no more about the entire State of Texas, then you probably ought not be in this state legislature. And I ask members to think about what's right. Do what's right. Ask yourself. We all know what's right. And ask, does it make sense to do something so unfair to those that can't protect themselves? And I just ask you to do the right thing and vote no on this bill.

REMARKS BY REPRESENTATIVE TURNER

Thank you, Mr. Speaker. In 1989, when I came to the legislature the biggest issue that was facing us was workers' comp. And what we were hearing in 1989, the premiums were high, businesses were having to shut down, some were threatening to leave, and insurance companies were threatening to leave Texas. As a freshman member, coming out of a large law firm, being a lawyer, I listened to those arguments and recognized many of the people in my district were workers. After listening to those arguments and trying to be sensitive to those who were affected by high workers' comp rates, I made a vote for workers' comp. I voted for it because I wanted business to be protected and I wanted insurance companies to stay in the State of Texas. Some 12, 13 years later, workers' comp insurance rates in the State of Texas are the highest in the country. And at the same time, our system is still in crisis. In 1989, my law firm stopped handling workers' comp claims because we eliminated the incentive or benefit. Lawyers are no longer in the system. Many lawyers won't even take workers' comp claims. But the insurance premiums—the workers' comp premiums are the highest in the United States.

Today again, doctors have said that there is a crisis—that premiums have shot up. My own doctor has told me to vote for medical malpractice reform. And so I came here to this session again committed to assist doctors in their crisis, recognizing that one, we need them, recognizing, two, that there are a lot of places that don't have them, and recognizing that we must do something to get it under control. And whether you blame insurance companies or not, we needed to do something for medical malpractice reform. And even now, I am prepared to vote for medical malpractice reform, even though that is something of what our law firm does. We will vote for it. No problem.

But the bill goes much farther than that. It goes farther than that. And that's what disturbs me the most. I am a trial lawyer. Many of you know what I do. And let me tell you, not too long ago—a few years ago in Houston, Harris County, I believe many of you know that there's a mall there. The roof collapsed. Every morning they invited these seniors to come to the mall to walk around for protection because the seniors felt safer walking in the malls than walking in their neighborhoods. Many of these people have retired from teaching. One morning they were walking through the mall. And one of the major shopping centers was under construction. And while the seniors were walking they heard a noise. And a few seconds later the roof fell down. The beams fell across them. Three of the

seniors, the women, were killed. I happened to be the lead attorney on that case. And during the course of that case we discovered that the contractors had taken a shortcut. And when the CEO of Northline came to the stand and testified, he indicated that they made some mistakes. That they had taken some cost saving initiatives, but it cost three women their lives. They were retirees. Their economic damages were not very much, but they had made their contribution to society. And what ended up happening for the benefit for those that wanted to survive a little bit is—what the jurors were hearing about was their pain and their suffering. And because the system of Texas was as it is, their families received an award. An award that was not even what the companies agreed—that the award that they were receiving was fair. The jury did not decide how much they were going to get. The companies themselves gave them far more than what this bill, Representative Nixon, would give them. The companies recognized that they had made a mistake. Under this bill they would have received far less.

A few years before then in the Phillips Petroleum case—not too far from Harris County—there was an explosion. Twenty two people were killed. Many more were seriously hurt. Many were seriously burned. I was an attorney in that case. And some of the people were so burned that their hands—their fingers—had been removed. And the reward that they would receive was not so much based on their economic damages, but when the jurors were prepared to hear the case, it ended up settling. What they received was based on their pain, their suffering, and their disfigurement. And what they received—and even the companies agreed—was far more than what this bill would have given them.

The problem that I have with this bill is that it goes far more, far beyond what is just and what is fair. And it's not about rich or poor because it can apply to any person living anywhere in this state, whether you are rich or whether you are poor. The bill goes far, far beyond what it should. And so I have problems with it. And I believe that all of us should have problems with it.

Lastly, many of us on this floor, both Republicans and Democrats alike, do not like this bill. We made light jokes, and I tipped my hat off to him. But if truth be told, many Republicans and Democrats in this hall do not like this bill. Representative Wilson was right the other day. If you remove those in the gallery—trial lawyers and big-time business folk—and allow the people that have been allowed by our districts to advance a policy in the best interest of the state—truth be told, this bill would not look the way it is. Because you and I, both Republicans and Democrats alike, would not be presenting this bill to the people to the State of Texas.

When I was elected here 12, 13 years ago, I was elected by the people of the State of Texas. Whether I am here for another few months or whether I come back in the next session, the reality is I've got to look at this and look at myself and ask what legacy am I leaving to the State of Texas? I trust the jurors in this state. Just like the very same jurors that vote for you, and vote for you, and vote for me. They're the ones that listen to those cases and they're the ones that decide whether or not there's an award and what that award should be.

Doctors, I understand, they're demanding relief. But no one else has come to this chamber asking for as much relief as we are giving them today. As much as I have tried to convince myself that **HB 4** is OK, and that we can pass it on and move forward, I literally cannot. At some point in time, the elected representatives of the State of Texas must decide what is in the best interest of this state. Your people elected you. The hardest votes to cast are the votes when people are standing in the gallery who are prepared to spend money whether either for you or against you. And folks who can say to you that if you don't go this way you will not be here next session. But truth be told, at the end of the day, as elected representatives, we must cast decisions we believe are in the best interest of the State of Texas.

This is a bad bill. This is a bad bill. And I don't care how we try to camouflage it. It is not in the best interest of the State of Texas. It simply is not. Now, for those that may disagree with me, and I understand that, I've been here long enough to know that we have different points of view. That's fine. I understand. But for those of you that agree with me, both Republicans and Democrats alike, who in your own minds you know this bill is not in the best interest of the State of Texas, why shouldn't we stand up? And in all due respect say to the people in the State of Texas, and say to the people in our district, that it's wrong and it's not right. And there is nothing that anyone can offer me, say to me, or do to me that can make me vote for a bill that I know in my heart is wrong. When all is said and done, I look into my daughter's face, and I say what I want to the legislators this evening. I want to leave this chamber—not necessarily saying that people love me, but I do want to leave here saying that you respected me. And that I voted on what I thought was the best. I like this speaker. Many of you know that. But as much as I like him, I have to live in and will represent the district who sent me here. And at the end of the day, I must choose to stand with my district. This bill and **HJR 3** are not in the best interest of my district. And for that reason, I shall vote against it. With all due respect to its author.

REMARKS BY REPRESENTATIVE NIXON

Mr. Speaker, members, you have worked very hard. You have worked very, very hard. For this bill, against this bill, to change this bill, for each other, sometimes against each other, learning new rules, stretching new muscles, and doing what this body was designed to do. It is in the great clash of ideas that policy is set. I believe that each of you who have fought for or against amendments, provisions, sections, concepts, ideals, caps have done it sincerely, earnestly, with your very best interest of your constituents at heart. It is always difficult to make changes. Sometimes we are afraid of change. Sometimes we are afraid—we say, "Well it always works this way, let's just keep it this way. This is the way we've always done it. This is what's right because we've always done it."

And there comes a time in a body like this where we represent our districts—where we have to say it's time to make a change, where it is OK to make a change, where we have the courage to make a change. When we identify that there are problems in our judicial system, and I agree with the concepts that Mr. Dunnam set forth about lawyers. I mean it was the lawyers that had the guts

enough to stand up to King George. It was lawyers that had the guts enough to stand up to Santa Anna. And it is lawyers who have fought tooth and nail on both sides of this issue for the last week and before that. But on this floor, dealing with what is appropriate change in our judicial system, I have told you at the beginning, and I will tell you again now—we have set out to provide meaningful remedies for those that have been wronged and to protect the rights of those who have done no wrong.

It is appropriate in this body to recognize that sometimes in our judicial system, in this state, we have gone overboard in seeking remedies against those that have done no wrong. And it is right for this body to curtail that activity. It is right for us to use our common sense, to use our legal wisdom, and in the great clash of ideas, work out solutions. And I want to thank all of you that have worked so very hard for and against this bill. For all of the hard work that you've done to make this a better piece of legislation. You may be very, very proud of the work that you have done. This was a hard job for all of us. You may be very, very proud whether you vote yes, or whether you vote no, of both your vote, and your work. With that, Mr. Speaker, I move adoption of **HB 4**.

A record vote was requested.

CSHB 4, as amended, was passed to engrossment by (Record 134): 99 Yeas, 45 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flores; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; McReynolds; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Gallego; Garza; Giddings; Guillen; Hochberg; Hodge; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson.

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

Absent, Excused — Oliveira; Wise.

Absent — Canales.

REGULAR ORDER OF BUSINESS SUSPENDED

Representative Edwards moved to proceed with the reading and referral of bills as the last order of business.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Appropriations, 8 a.m. today, March 28, E1.030.

REMARKS ORDERED PRINTED

Representative Mabry moved to print the closing remarks on **CSHB 4**.

The motion prevailed without objection.

PROVIDING FOR RECESS

Representative Seaman moved that, at the conclusion of the reading of bills and resolutions on first reading and referral to committees, the house recess until 9 a.m. today in memory of Vincent Joseph Weber of Port Lavaca.

The motion prevailed without objection.

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

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

RECESS

In accordance with a previous motion, the house, at 12:32 a.m. Friday, March 26 recessed until 9 a.m. today.

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

HB 2 (By Swinford), Relating to the reorganization of, efficiency in, and other reform measures applying to state government.

To Government Reform.

HB 10 (By Heflin), Relating to the use of dedicated revenue during a state budget crisis.

To Appropriations.

HB 2901 (By Phillips), Relating to the conduct constituting the offense of disorderly conduct.

To Criminal Jurisprudence.

HB 2902 (By Phillips), Relating to the assessment of costs for the improvement of a road in a part of a subdivision.

To Transportation.

HB 2903 (By Phillips), Relating to the circumstances under which contraband is not subject to forfeiture.

To Criminal Jurisprudence.

HB 2904 (By Phillips), Relating to zoning around Lake Ralph Hall.

To Land and Resource Management.

HB 2905 (By Phillips), Relating to the granting of variances to certain requirements concerning specific information logo signs, major agricultural interest signs, and major shopping area guide signs.

To Transportation.

HB 2906 (By Thompson), Relating to state compensation to counties based on the use of drug courts.

To Judicial Affairs.

HB 2907 (By Eissler), Relating to optional benefits under the Texas school employees uniform group coverage program.

To Insurance.

HB 2908 (By Eissler), Relating to the development of essential knowledge and skills for subjects in the enrichment curriculum.

To Public Education.

HB 2909 (By Swinford), Relating to the administration of state-federal relations and federal formula grant programs.

To Government Reform.

HB 2910 (By Gallego and Swinford), Relating to the state's goal for electrical generation capacity by renewable energy technologies.

To Regulated Industries.

HB 2911 (By Homer), Relating to designation of Farm-to-Market Road 68 in Fannin County as Speaker Jimmy Turman Road.

To Transportation.

HB 2912 (By Homer), Relating to industrial development corporations.

To Economic Development.

HB 2913 (By Homer), Relating to the Southern Dairy Compact; providing an administrative penalty.

To Agriculture and Livestock.

HB 2914 (By Baxter), Relating to the time within which ballots for early voting by mail must be mailed to a voter.

To Elections.

HB 2915 (By Wise), Relating to a nonprofit corporation.

To Higher Education.

HB 2917 (By Christian), Relating to a tax on certain imported alcoholic beverages.

To Licensing and Administrative Procedures.

HB 2918 (By Christian), Relating to the administration of the rural volunteer fire department assistance program.

To Agriculture and Livestock.

HB 2919 (By Christian), Relating to the creation and operation of a Texas Certified Retirement Community Program.

To Economic Development.

HB 2920 (By Christian), Relating to revision of Texas arbitration laws.

To Civil Practices.

HB 2921 (By Christian), Relating to restricting the state from competing with private enterprise.

To Business and Industry.

HB 2922 (By Marchant), Relating to a nonsubstantive revision of statutes relating to the Texas Department of Insurance, the business of insurance, and certain related businesses, including conforming amendments, repeals, and penalties.

To State Affairs.

HB 2923 (By Marchant), Relating to jury service; providing a criminal penalty.

To Judicial Affairs.

HB 2924 (By Geren), Relating to the addition of territory to a public improvement district.

To Land and Resource Management.

HB 2925 (By Geren), Relating to certain offenses eligible for civil commitment.

To Criminal Jurisprudence.

HB 2926 (By Geren), Relating to the licensing of marine manufacturers, dealers, and distributors.

To State Cultural and Recreational Resources.

HB 2927 (By Lewis), Relating to the implementation of a project for reintegration of offenders into the labor force.

To Corrections.

HB 2928 (By Lewis), Relating to the composition and operations of parole panels.

To Corrections.

HB 2929 (By Lewis), Relating to the assessment of the mental health of certain newly confined or imprisoned persons.

To Corrections.

HB 2930 (By Lewis), Relating to the confidentiality of certain personal information in real property records filed with the county clerk.

To County Affairs.

HB 2931 (By Lewis), Relating to the efficient administration of county government.

To County Affairs.

HB 2932 (By Flores), Relating to the permitting process for the construction of certain concrete plants.

To Environmental Regulation.

HB 2933 (By Flores), Relating to the transfer of the Commission on Human Rights to the Attorney General.

To Government Reform.

HB 2936 (By Mabry), Relating to the control of discharges from wastewater retention structures associated with certain concentrated animal feeding operations.

To Agriculture and Livestock.

HB 2937 (By Phillips), Relating to the creation of the office of criminal district attorney of Grayson County and to the abolition of the office of county attorney of Grayson County.

To County Affairs.

HB 2938 (By McReynolds), Relating to the appraisal of timber land used in the production of farm, ranch, or timber products.

To Ways and Means.

HB 2939 (By McReynolds), Relating to service of certain public school administrators as classroom teachers.

To Public Education.

HB 2940 (By McReynolds), Relating to the funding of the administrative costs of the Texas Environmental Education Partnership Fund Board.

To Environmental Regulation.

HB 2941 (By McReynolds), Relating to the designation of the El Camino East-West Corridor.

To Transportation.

HB 2942 (By McReynolds), Relating to the use of electronic means for certain interactions between taxpayers and appraisal districts.

To Ways and Means.

HB 2943 (By McReynolds), Relating to agreements between suppliers of and dealers in forestry harvesting and certain other equipment.

To Agriculture and Livestock.

HB 2945 (By King), Relating to the oral or electronic creation and use of certain documents related to the prosecution of a criminal offense.

To Criminal Jurisprudence.

HB 2946 (By Goodman), Relating to an annual adjustment of franchise fees paid to a municipality by certain providers of electricity.

To Regulated Industries.

HB 2947 (By Casteel), Relating to cost control and accountability in the decentralization of state programs and services.

To Government Reform.

HB 2948 (By Hope), Relating to a timeshare developer's ability to complete certain documents.

To Business and Industry.

HB 2949 (By Hope), Relating to agreements that waive the right to demand a jury trial.

To Civil Practices.

HB 2950 (By Hope), Relating to the powers of a groundwater conservation district protecting the historic use of groundwater.

To Natural Resources.

HB 2951 (By Hope), Relating to regulation of spacing and production of groundwater from aquifers by a groundwater conservation district.

To Natural Resources.

HB 2952 (By Kuempel), Relating to the borrowing of money and encumbrance of property by a joint county and municipal hospital.

To County Affairs.

HB 2953 (By Wolens), Relating to the creation and powers of a north Texas regional mobility authority.

To Transportation.

HB 2954 (By Mabry and Menendez), Relating to requirements for certain discounts for homeowners insurance coverage.

To Insurance.

HB 2956 (By E. Jones), Relating to a franchise tax credit for oil and gas producers that make financial contributions to institutions of higher education.

To Ways and Means.

HB 2957 (By E. Jones), Relating to continuation of the self-directed semi-independent agency project.

To Appropriations.

HB 2958 (By Mabry), Relating to the eligibility of a person to be the nominee of a political party other than the party holding the primary in which the person voted or was a candidate.

To Elections.

HB 2959 (By Krusee), Relating to bond requirements for privatized maintenance contracts.

To Transportation.

HB 2960 (By Krusee), Relating to county assessments for street improvements.

To County Affairs.

HB 2961 (By Krusee), Relating to the use of revenue from the municipal hotel occupancy tax by certain municipalities.

To Local Government Ways and Means.

HB 2962 (By Krusee), Relating to the use of shadow tolls to finance the construction, maintenance, and operation of a tolled or nontolled state highway or another toll facility.

To Transportation.

HB 2963 (By Krusee), Relating to the regulation of motor vehicle emissions in counties participating in early action compacts.

To Environmental Regulation.

HB 2964 (By Howard), Relating to the maintaining of municipal school district status; and the levy of municipal school district taxes.

To Public Education.

HB 2965 (By Casteel), Relating to the use of state land for public hunting.

To Government Reform.

HB 2966 (By Solis), Relating to contracting for service delivery of workforce training and services.

To Economic Development.

HB 2967 (By Naishtat), Relating to the establishment of a program for the disposition of electronic equipment in a manner that protects the water and other natural resources of the state; providing a criminal penalty.

To Environmental Regulation.

HB 2968 (By Naishtat), Relating to administrative and judicial review of certain decisions about public assistance benefits.

To Human Services.

HB 2969 (By Naishtat), Relating to exempting certain persons in transitional living programs from the payment of tuition and fees at public institutions of higher education.

To Higher Education.

HB 2970 (By Naishtat), Relating to the state program of temporary assistance and related support services for needy persons.

To Human Services.

HB 2971 (By Harper-Brown), Relating to certain license plates issued by the Texas Department of Transportation.

To Transportation.

HB 2972 (By Chavez), Relating to financial literacy programs for consumers.

To Financial Institutions.

HB 2973 (By Chavez), Relating to information concerning currency exchange rates in international transfers of money; providing a civil penalty.

To Border and International Affairs.

HB 2974 (By Chavez), Relating to a Texas-Mexico border trade corridor plan.

To Border and International Affairs.

HB 2975 (By Chavez), Relating to the establishment of a Texas-Mexico border region technology training pilot program by the Texas Workforce Commission.

To Border and International Affairs.

HB 2976 (By Chavez), Relating to authorizing cooperative agreements between local, state, and federal governments and the United Mexican States to promote economic development and heritage tourism near the Rio Grande.

To Border and International Affairs.

HB 2977 (By Chavez), Relating to a program to provide incentives for certain persons to earn doctorate degrees and enter the faculty and administration of institutions of higher education.

To Higher Education.

HB 2978 (By Callegari), Relating to strategic partnership agreements between municipalities and certain conservation and reclamation districts.

To Natural Resources.

HB 2979 (By Goolsby), Relating to the right of an adopted person to have access to the person's original birth certificate.

To Juvenile Justice and Family Issues.

HB 2980 (By Goolsby), Relating to the designation of an elevated pedestrian walkway over Interstate Highway 635 as the Joe Ratcliff Walkway.

To Transportation.

HB 2981 (By Goolsby), Relating to the board composition, establishing a minimum rank for a designee, limiting the municipal court's representation on the board to one position, the election process for the sureties representative and the requirement for board members to read this chapter and the local policies adopted by the board.

To Urban Affairs.

HB 2982 (By Nixon), Relating to workers' compensation insurance coverage for certain persons engaged in building or construction.

To Business and Industry.

HB 2983 (By Hupp), Relating to the administration of certain psychoactive medications to a child.

To Public Health.

HB 2984 (By Hupp), Relating to the administration of the Communities In Schools program.

To Human Services.

HB 2986 (By Capelo), Relating to increasing the number of registered nurses and other health care professionals.

To Public Health.

HB 2987 (By Capelo), Relating to the regulation and enforcement of certain licensing programs by the Texas Department of Health; providing administrative, civil, and criminal penalties.

To Public Health.

HB 2988 (By Capelo), Relating to public health preparedness; providing criminal penalties.

To Public Health.

HB 2989 (By Capelo), Relating to an inquest when a body part is found.

To Public Health.

HB 2990 (By Capelo), Relating to fees for copies of birth and death certificates.

To Public Health.

HB 2991 (By Capelo), Relating to the purchase of equipment and hiring of employees by the Texas Department of Health for newborn screening.

To Public Health.

HB 2992 (By Capelo), Relating to the repeal of certain reporting requirements of drug manufacturers and wholesalers.

To Public Health.

HB 2993 (By Capelo), Relating to the ratio of pharmacists to pharmacy technicians in certain pharmacies.

To Public Health.

HB 2994 (By Capelo), Relating to the advertisement and promotion of certain compounded drug products by a pharmacy or pharmacist.

To Public Health.

HB 2995 (By Capelo), Relating to the liability of physicians, health care providers, and hospital district management contractors who provide services for certain governmental entities.

To Public Health.

HB 2996 (By Capelo), Relating to mobile pharmacies.

To Public Health.

HB 2997 (By Capelo), Relating to the regulation of contact lens dispensing.

To Public Health.

HB 2998 (By Capelo), Relating to the authority of chiropractors to form certain business entities with certain other professionals.

To Public Health.

HB 2999 (By Capelo), Relating to reimbursement under certain health benefit plans for services provided by licensed athletic trainers.

To Public Health.

HB 3000 (By Capelo), Relating to reimbursement under the workers' compensation system for certain providers of health care services.

To Business and Industry.

HB 3002 (By Swinford), Relating to the fees of, and other financial matters applying to, state governmental entities.

To Government Reform.

HB 3003 (By Swinford), Relating to the management, use, and information about state facilities, real property, and other property.

To Government Reform.

HB 3004 (By Swinford), Relating to state management and use of information and information technology.

To Government Reform.

HB 3005 (By Swinford), Relating to state contracts and procurement.

To Government Reform.

HB 3006 (By Swinford), Relating to state health and human services.

To Government Reform.

HB 3007 (By Swinford), Relating to state personnel and other state human resources matters.

To Government Reform.

HB 3013 (By Capelo), Relating to a chemical dependency counselor or counselor intern.

To Public Health.

HB 3074 (By Flynn), Relating to required activities and limits on the amounts of state financial assistance for which regional planning commissions may be eligible:

To Government Reform.

HB 3157 (By Bonnen), Relating to the regulation of the disposal of solid waste.

To Environmental Regulation.

HB 3169 (By Merritt), Relating to the sale of certain land dedicated to the permanent school fund.

To Land and Resource Management.

HB 3207 (By Heflin), Relating to repaying the economic stabilization fund for any appropriations made from the fund for the state fiscal year ending August 31, 2003; making an appropriation.

To Appropriations.

HB 3223 (By Bohac, Hegar, and Bonnen), Relating to limiting the maximum average annual increase in the appraised value of real property for ad valorem tax purposes to five percent.

To Local Government Ways and Means.

HB 3228 (By Rose), Relating to limiting the amount of county and municipal ad valorem taxes that may be imposed on the residence homestead of a disabled person.

To Local Government Ways and Means.

HB 3247 (By Eiland), Relating to causeways, bridges, tunnels, turnpikes, and highways in certain counties bordering the Gulf of Mexico and in adjacent counties.

To Transportation.

HB 3476 (By Y. Davis), Relating to the authority of the boards of trustees of certain state retirement systems to contract with professional investment managers.

To Pensions and Investments.

HB 3507 (By Marchant), Relating to nonsubstantive additions to and corrections in enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes, and to conforming codifications enacted by the 77th Legislature to other Acts of that legislature.

To State Affairs.

HB 3508 (By Marchant), Relating to the adoption of a nonsubstantive revision of local laws concerning special districts, including conforming amendments.

To State Affairs.

HB 3549 (By J. Keffer), Relating to the establishment, operation, and funding of an economic development bank; authorizing programs and services within the bank;

To Economic Development.

HCR 90 (By Eissler), Memorializing congress to expand the medical savings account program to allow states to design such programs for their employees.

To Insurance.

HCR 91 (By Thompson), Directing the Legislative Budget Board to study establishing a Family Temporary Disability Insurance and Leave Program modeled upon California law.

To Business and Industry.

HCR 92 (By Quintanilla and Haggerty), Designating the sopaipilla as the official State Pastry of Texas.

To State Cultural and Recreational Resources.

HCR 93 (By Dutton), Memorializing Congress to request that U.S. Department of Justice investigate the Houston Police Department Crime Laboratory and review past criminal cases.

To Criminal Jurisprudence.

HCR 94 (By Guillen), Encouraging the Texas Workforce Commission and the Texas Department on Aging to establish a memorandum of understanding and a process to promote local partnerships relevant to a coordinated delivery of support services to older workforce development participants.

To Economic Development.

HCR 95 (By Coleman), Directing the Texas Department of Transportation to expand the Green Ribbon Project to enhance the appearance of public highways in urban areas throughout the state.

To Transportation.

HCR 97 (By Driver), Requesting the lieutenant governor and the speaker of the house create an interim committee to conduct a study on the compensation and benefits paid to persons employed by the state as peace officers.

To State Affairs.

HCR 99 (By Capelo), Recognizing March 2003 as National Nutrition Month in Texas.

To Public Health.

HCR 100 (By Capelo), Directing the Texas Building and Procurement Commission to name the new public health laboratory building for Dr. Jesse Vernal Irons.

To State Affairs.

HCR 101 (By Capelo), Requesting that Congress enact a Medicare prescription drug benefit.

To Public Health.

HCR 103 (By Eiland), Memorializing the United States government to improve the enforcement of food import restrictions on seafood imports.

To Public Health.

HCR 125 (By J. Jones), Directing the Texas Department on Aging to lead a partnership of state agencies in support of a web, print, and phone-based information system for older Texans.

To Human Services.

HCR 150 (By Pitts), Designating October 24, 2003, as Presbyterian Children's Homes and Services Day in Texas.

To Rules and Resolutions.

HCR 151 (By Chavez), Urging Congress to reinstate funding for the Community Adjustment and Investment Program.

To Border and International Affairs.

HCR 154 (By Lewis), Directing the State Preservation Board to place a bust of the Honorable Doyle Willis in the extension wing of the Capitol.

To State Affairs.

HCR 156 (By Noriega), Memorializing congress to enact the Citizenship For America's Troops Act to allow citizenship through service in the U.S. Armed Forces.

To Defense Affairs and State-Federal Relations.

HJR 1 (By Puento), Proposing a constitutional amendment allowing the expenditure of motor vehicle fuel taxes and registration fees for rights-of-way for railroads and utilities.

To Ways and Means.

HJR 2 (By Heflin), Proposing a constitutional amendment requiring that money appropriated from the economic stabilization fund be repaid to the fund during the next state fiscal biennium.

To Appropriations.

HJR 4 (By Bohac, Hegar, and Bonnen), Proposing a constitutional amendment authorizing the legislature to limit the maximum average annual increase in the appraised value of real property for ad valorem tax purposes to five percent or more.

To Local Government Ways and Means.

HJR 5 (By Rose), Proposing a constitutional amendment to prohibit an increase in the total amount of county or municipal ad valorem taxes that may be imposed on the residence homestead of a disabled person.

To Local Government Ways and Means.

HJR 6 (By Wilson), Proposing a constitutional amendment establishing a moratorium in death penalty cases in which analyses performed by a crime laboratory operated by the City of Houston Police Department were admitted into evidence.

To Criminal Jurisprudence.

HJR 7 (By Corte), Proposing a constitutional amendment authorizing the issuance of general obligation bonds to provide loans for economic development projects that enhance the military value of military installations in the state.

To Defense Affairs and State-Federal Relations.

HJR 8 (By Merritt), Proposing a constitutional amendment relating to establishing the Texas Great Teachers & Facilities Fund as a sequestered fund, funded by dedicated sales tax revenue, and providing for mandatory ad valorem property tax relief.

To Public Education.

HJR 9 (By Howard), Proposing a constitutional amendment to authorize the legislature to set a limit of two percent on the annual percentage increase in the appraised value of residence homesteads and certain other residential property.

To Local Government Ways and Means.

HJR 10 (By Krusee), Proposing a constitutional amendment authorizing the legislature to provide for a six-year term for a board member of an intermunicipal commuter rail district.

To Transportation.

HJR 81 (By Elkins), Proposing a constitutional amendment to require automatic annual adjustments of the amount of the residence homestead exemption from ad valorem taxation for public school purposes to correspond to annual increases in the market value of the residence homestead for ad valorem tax purposes.

To Local Government Ways and Means.

HJR 82 (By Goodman, Grusendorf, T. Smith, Geren, Pitts, et al.), Proposing a constitutional amendment to provide for the continuation of funding for capital improvements and acquisitions at The University of Texas at Arlington.

To Higher Education.

HJR 83 (By Hopson), Proposing a constitutional amendment authorizing the legislature to allocate an amount greater than one-fourth of the net revenue from the tax on motor fuels sold to volunteer fire departments to the available school fund.

To Ways and Means.

HJR 84 (By Uresti), Proposing a constitutional amendment providing for the filling of a temporary vacancy in a public office created by the activation for military service of a public officer.

To State Affairs.

HJR 85 (By Homer), Proposing a constitutional amendment to allow wineries in this state to sell and dispense certain wine.

To Licensing and Administrative Procedures.

HJR 86 (By Ellis), Proposing a constitutional amendment to allow a local option election to legalize or prohibit the sale of mixed beverages in certain special districts.

To Licensing and Administrative Procedures.

HJR 87 (By Griggs), Proposing a constitutional amendment relating to the state's duty to fund the public school system.

To Public Education.

HJR 88 (By Coleman), Proposing a constitutional amendment to authorize the use of motor vehicle registration fees to support trauma centers.

To Transportation.

HJR 89 (By Hilderbran), Proposing a constitutional amendment providing for the issuance of additional general obligation bonds by the Parks and Wildlife Department.

To State Cultural and Recreational Resources.

HJR 90 (By Bonnen), Proposing a constitutional amendment to provide for the exemption from ad valorem taxation of public property used for a public purpose, as defined by the legislature.

To Ways and Means.

HJR 91 (By Lewis), Proposing a constitutional amendment allowing a state mandate imposed on a county to have effect only if the state provides for the payment to the county of the cost of the mandate.

To County Affairs.

HJR 92 (By Wilson), Proposing a constitutional amendment authorizing a student member of the board of regents of a state university or state university system to serve a term that differs from the terms served by the other members of the board.

To Higher Education.

HJR 93 (By Wilson), Proposing a constitutional amendment to abolish and prohibit constitutional and statutory dedications of and restrictions on the use of state funds and revenue.

To Ways and Means.

HJR 94 (By Merritt), Proposing a constitutional amendment to permit the legislature to require the sale of certain land dedicated to the permanent school fund in exchange for a specified sum.

To Land and Resource Management.

HJR 95 (By Kolkhorst), Proposing a constitutional amendment directing the comptroller to transfer to the economic stabilization fund one-half of any positive balance of undedicated general revenues that are in the state treasury on the last day of a state fiscal biennium.

To Appropriations.

HJR 96 (By Rodriguez), Proposing a constitutional amendment that provides for the approval of an income tax adopted by the legislature, requires that a deduction or exemption to the tax that redistributes the combined tax liability be approved in a statewide referendum, and allows revenue from the tax to be spent on education and any other purpose.

To Ways and Means.

HJR 97 (By Heflin), Proposing a constitutional amendment relating to the membership of the State Commission on Judicial Conduct.

To Judicial Affairs.

HJR 98 (By Solis), Proposing a constitutional amendment requiring the legislature to appropriate money for public schools, public colleges and universities, and health and human services before appropriating money for other purposes.

To Appropriations.

HJR 99 (By J. Moreno), Proposing a constitutional amendment requiring eight justice of the peace precincts in Harris County, with at least two justices of the peace and at least one constable to be elected in each of those precincts.

To Judicial Affairs.

HJR 100 (By Y. Davis), Proposing a constitutional amendment relating to the authority of the boards of trustees of certain state retirement systems to contract with professional investment managers.

To Pensions and Investments.

HR 476 (By Hardcastle), Amending the Housekeeping Resolution to authorize the Committee on House Administration to provide additional funds to members representing districts with additional costs because of geographic size.

To State Affairs.

HR 501 (By Chavez), Directing the House Committee on Higher Education to conduct a study of the calculation of student grade point averages at public colleges and universities and of additional and modest fees that may be assessed on students who retake certain classes.

To Higher Education.

HR 502 (By Alonzo), Requesting the President of the United States to recognize that Texas and nearly every other state is in fiscal crisis and that cutting services and funding to the states should be a last resort.

To State Health Care Expenditures, Select.

HR 526 (By Elkins), Relating to a U.S. constitutional amendment to prohibit courts from mandating states or political subdivisions to levy or increase taxes.

To State Affairs.

HR 570 (By Hamric), Electing the children of house members to the office of mascot.

To House Administration.

HR 571 (By Hamric), Designating the grandchildren of house members as honorary mascots.

To House Administration.

SB 86 to Higher Education.

SB 173 to Defense Affairs and State-Federal Relations.

SB 235 to Business and Industry.

SB 314 to Government Reform.

SB 333 to Public Health.

SB 349 to Economic Development.

SB 358 to Juvenile Justice and Family Issues.

SB 361 to Transportation.

SB 367 to Natural Resources.

SB 368 to Natural Resources.
SB 369 to Natural Resources.
SB 370 to Natural Resources.
SB 371 to Natural Resources.
SB 372 to Natural Resources.
SB 374 to Economic Development.
SB 418 to Insurance.
SB 441 to Transportation.
SB 442 to Land and Resource Management.
SB 443 to Law Enforcement.
SB 458 to Criminal Jurisprudence.
SB 473 to Business and Industry.
SB 494 to Insurance.
SB 514 to Transportation.
SB 535 to Border and International Affairs.
SB 540 to County Affairs.
SB 547 to Public Education.
SB 589 to Public Education.
SB 590 to Public Education.
SB 597 to Licensing and Administrative Procedures.
SB 660 to Transportation.
SB 716 to Transportation.
SB 737 to Defense Affairs and State-Federal Relations.
SB 900 to Public Education.
SJR 22 to Financial Institutions.

Pursuant to Rule 1, Section 4 of the House Rules, the chair corrects the referral of the following bills and resolutions:

HB 2219 (By Grusendorf), Relating to the requirements, administration, and enforcement of sex offender registration.

To Criminal Jurisprudence.

HB 2345 (By Mowery), Relating to requiring a municipality to make a change in zoning.

To Urban Affairs.

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

House List No. 19**HCR 80, HCR 148****Senate List No. 11****SCR 17****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, March 27, 2003

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:**LOCAL AND UNCONTESTED CALENDAR****SB 117**

Staples

Relating to the authority of certain retired peace officers to carry certain weapons.

SB 307

Gallegos

Relating to the composition of the Commission on Law Enforcement Officer Standards and Education.

SB 313

Harris

Relating to collection of civil damages awarded against certain nursing institutions.

SB 339

Nelson

Relating to issuance of certain liability insurance by the Texas Medical Liability Insurance Underwriting Association.

SB 403

Madla

Relating to the designation of enterprise zones and enterprise projects.

SB 421

Carona

Relating to coverage of assisted living facilities under professional liability insurance and the Texas Medical Liability Insurance Underwriting Association.

SB 461

Staples

Relating to the operation of authorized emergency vehicles.

SB 482

Madla

Relating to certain chaplains killed in the line of duty.

- SB 484** Estes
Relating to the competitive bidding requirement for the Greater Texoma Utility Authority.
- SB 542** Lindsay
Relating to exclusion of land from certain water districts for failure to provide facilities and services.
- SB 558** Madla
Relating to immigration visa waivers for physicians.
- SB 572** Harris
Relating to the euthanasia of an animal by an animal shelter; providing criminal penalties.
- SB 579** Lindsay
Relating to the confidentiality of certain records in an adoption placement by the Department of Protective and Regulatory Services.
- SB 583** Shapleigh
Relating to information that must be included in the adjutant general's annual report.
- SB 592** Lindsay
Relating to the location of a jail or related facility operated jointly by a municipality and a county.
- SB 608** Janek
Relating to the creation of resident and nonresident fishing guide licenses.
- SB 642** Madla
Relating to the retirement system for firefighters and police officers in certain municipalities.
- SB 653** Wentworth
Relating to the charges that may be imposed under the public information law for providing a copy of public information.
- SB 667** Ogden
Relating to the establishment or use of certain cemeteries.
- SB 695** Janek
Relating to the authority of certain counties to prohibit the use or possession of certain fireworks on public beaches.
- SB 714** Lindsay
Relating to the liability of a taxing unit for the fee of an attorney ad litem in a suit to collect delinquent ad valorem taxes.
- SB 729** Staples
Relating to the elements of the offense of harassment by persons in certain correctional facilities.
- SB 749** Madla
Relating to continuing education requirements for certain court clerks.
- SB 752** Harris
Relating to joint negotiation by physicians and health benefit plans.

SB 803

Janek

Relating to the advertisement and promotion of certain compounded drug products by a pharmacy or pharmacist.

SB 841

Whitmire

Relating to the regulation of certain extra job coordinators by the Texas Commission on Private Security.

SB 935

Jackson

Relating to fraternal organizations that are exempt from certain requirements of the Alcoholic Beverage Code.

SB 939

Janek

Relating to the ratio of pharmacists to pharmacy technicians in certain pharmacies.

Respectfully,

Patsy Spaw

Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Thursday, March 27, 2003 - 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 152

Davis, John

SPONSOR: Jackson

Welcoming faculty and students from the Galloway School in Houston to the State Capitol.

Respectfully,

Patsy Spaw

Secretary of the Senate

Message No. 3

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Thursday, March 27, 2003 - 3

The Honorable Speaker of the House

House Chamber

Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

SB 82 Zaffirini
Relating to the priority given to the hearing by trial courts of certain ad valorem tax matters.

SB 204 Wentworth
Relating to the use of headlights and windshield wipers when driving in unfavorable conditions.

SB 513 Lindsay
Relating to limiting the liability of certain persons giving care, assistance, or advice during a disaster.

SB 724 Williams
Relating to the settlement of certain claims against the Texas Department of Transportation.

SB 735 Lindsay
Relating to local government officials serving on state boards.

SB 741 Van de Putte
Relating to certification in first aid and cardiopulmonary resuscitation for certain school district employees.

SB 759 Brimer
Relating to certain pesticide application by persons engaged in pest control work for a political subdivision.

SCR 33 Madla
In memory of the life of Robert Weston "Wolfman Jack" Smith.

Respectfully,
Patsy Spaw
Secretary of the Senate

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

March 26

Economic Development - **HB 739, HB 804, HB 1282, HB 1819, HB 1820**

Higher Education - **HB 1649, HB 1650**

Judicial Affairs - **HB 1084, HB 1677, HB 1944, SB 469**

Juvenile Justice and Family Issues - **HB 263**

Land and Resource Management - **HB 1129**

Licensing and Administrative Procedures - **HB 660, HB 671, HB 1510**

State Affairs - **HB 1191**

Transportation - **HB 678, HB 761, HB 960, HB 1117, HB 1883**

SENT TO THE GOVERNOR

March 26 - HCR 109

